

1141
No. 3103

1141
**United States Circuit Court
of Appeals**
For the Ninth Circuit

PORTLAND CATTLE LOAN COMPANY, a corporation,

Plaintiff in Error,

vs.

OREGON SHORT LINE RAILROAD COMPANY,
a corporation,

Defendant in Error.

TRANSCRIPT OF RECORD

On Writ of Error to the District Court of the
United States for the District of Oregon.

FILED
DEC 26 1917
F. D. MONCKTON,
CLERK

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*United States Circuit Court of Appeals for the
Ninth Circuit.*

PORTLAND CATTLE LOAN COMPANY, a corporation,

Plaintiff in Error,

vs.

OREGON SHORT LINE RAILROAD COMPANY,
a corporation,

Defendant in Error.

Names and addresses of Attorneys of Record:

CAREY AND KERR and

CHARLES A. HART,

Yeon Building,

Portland, Oregon,

Attorneys for Plaintiff in Error.

A. C. SPENCER and

W. A. ROBBINS,

Wells Fargo Building,

Portland, Oregon,

Attorneys for Defendant in Error.

*In the District Court of the United States for the
District of Oregon.*

PORTLAND CATTLE LOAN COMPANY, a corporation,

Plaintiff in Error,

vs.

OREGON SHORT LINE RAILROAD COMPANY,
a corporation,

Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America, District of Oregon, ss.
To Oregon Short Line Railroad Company, a corporation,
Greeting:

Whereas, Portland Cattle Loan Company has petitioned for, and an order has been made allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the District Court of the United States for the District of Oregon in your favor, and has given the security required by law;

You are therefore hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof to show cause, if any there be, why the errors complained of in said judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland in said district this 9th day of November in the year nineteen hundred seventeen.

Chas. E. Wolverton,
Judge.

Service accepted this 9th day of November, 1917.

W. A. Robbins,
Of Attorneys for Plaintiff Oregon Short Line Railroad Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

Portland Cattle Loan Company, a corporation,
Plaintiff in Error,

vs.

Oregon Short Line Railroad Company, a corporation,
Defendant in Error.

Defendant in Error.

WRIT OF ERROR.

The United States of America, ss.

The President of the United States of America.
To the Judge of the District Court of the United
States for the District of Oregon,
Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton, one of you, between Oregon Short Line Railroad Company, a corporation, plaintiff

and defendant in error, and Portland Cattle Loan Company, a corporation, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White,
Chief Justice of the Supreme Court of the United
States this 9th day of November, 1917.

G. H. Marsh,
Clerk of the District Court of the United States for
the District of Oregon.

(Seal.)

By F. L. Buck,
Deputy.

Endorsed: No. 7233.

In the U. S. Circuit Court of Appeals for the Ninth Circuit. Portland Cattle Loan Company, a corporation, Plaintiff in Error, vs. Oregon Short Line Railroad Company, a corporation, Defendant in Error. *Writ of Error*. Filed November 9, 1917. G. H. Marsh, Clerk United States District Court, District of Oregon. By F. L. Buck, Deputy Clerk.

In the District Court of the United States for the District of Oregon.

November Term, 1916.

Be it remembered that on the 2d day of November, 1916, there was duly filed in the District Court of the United States for the District of Oregon, an amended complaint in words and figures as follows, to-wit:

AMENDED COMPLAINT.

In the District Court of the United States in and for the District of Oregon.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

Oregon Short Line Railroad Company, a corporation organized and existing under and by virtue of

the laws of the State of Utah, brings this, its complaint against Portland Cattle Loan Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, on a cause of action arising under the laws regulating commerce, and thereupon, complains and says:

I.

That plaintiff now is, and at all times herein-after mentioned was a corporation organized and existing under and by virtue of the laws of the State of Utah, doing business as a common carrier of freight and passengers in the States of Utah, Wyoming, Idaho and Montana, and at and through Pocatello, in the State of Idaho, and Butte, in the State of Montana, and was so engaged in interstate commerce, subject and amenable to the Acts to Regulate Commerce, commonly known as the "Interstate Commerce Act," approved February 4th, 1887, and acts amendatory thereof and supplementary thereto; and was at all of said times engaged in the transportation of freight for hire, as a common carrier, in connection with other common carriers, from points in the State of Texas, and elsewhere, to points in the State of Idaho, and to points in the State of Montana, and particularly from Hereford, in the State of Texas, to Nampa in the State of Idaho, and from Hereford in the State of Texas, to Butte in the State of Montana.

II.

That the defendant, Portland Cattle Loan Company, now is and at all the times hereinafter mentioned was a corporation, organized and existing under and by virtue of the laws of the State of Oregon.

III.

That on or about the 28th day of September, 1912, this defendant caused A. G. Greenameyer to deliver to the Panhandle & Santa Fe Railway Company, at Hereford, in the State of Texas, forty-four (44) carloads of cattle, for transportation by freight from Hereford, Texas, over the line of the said Panhandle & Santa Fe Railway Company, to Amarillo, Texas, and thence over the lines of connecting carriers, and over the line of the Oregon Short Line Railroad Company, plaintiff herein, to Nampa, Idaho, there to be delivered to the Portland Cattle Loan Company, defendant herein, the consignee; and the said railroads, as connecting carriers thereupon transported the said forty-four (44) carloads of cattle from Hereford, Texas, to Amarillo, Texas, where the said forty-four (44) cars were combined into forty-three (43) cars, and were thereupon transported over the lines of connecting carriers, and over the line of this plaintiff, to Pocatello, Idaho, at which place twenty-seven (27) of the said forty-three (43) carloads of cattle, upon the order of defendant, were delivered to Portland Cattle

Loan Company the defendant herein, by said Oregon Short Line Railroad Company, this plaintiff; and thereupon defendant ordered this plaintiff to divert and transport sixteen (16) of the said forty-three (43) carloads of cattle to Butte, in the State of Montana, and plaintiff thereupon transported the said sixteen (16) carloads of cattle to Butte, Montana, at which place the said sixteen (16) carloads of cattle were delivered to the Portland Cattle Loan Company, defendant herein, by this plaintiff.

IV.

That more than thirty days prior to the delivery of said freight to the carriers aforesaid, said carriers had duly filed with the Interstate Commerce Commission of the United States at Washington, D. C., and posted and published pursuant to the provisions of the Act to Regulate Commerce, approved February 4th, 1887, and the acts amendatory thereof and supplementary thereto, commonly known as the Interstate Commerce Act, tariffs showing and establishing the lawful charges to be made to all persons, as in said act provided, for the transportation of cattle in carload lots, by freight, between said stations of Hereford, Texas, and Pocatello, Idaho, and between said stations of Hereford, Texas, and Butte, Montana; that the lawful charges established by said tariffs on said carloads of cattle between Hereford, Texas, and Pocatello, Idaho, as aforesaid, amounted to the

sum of one hundred and forty-two and 90/100 dollars (\$142.90) per car, making a total sum of three thousand eight hundred fifty-eight and 30/100 dollars (\$3858.30); that the lawful charges established by said tariffs on said carloads of cattle between Hereford, Texas, and Butte, Montana, amounted to the sum of one hundred seventy-one and 20/100 dollars (\$171.20) per car, making a total sum of two thousand seven hundred thirty-nine and 20/100 dollars (\$2739.20); that the lawful charges established by said tariffs on said carloads of cattle between Hereford, Texas, and Amarillo, Texas, amounted to the sum of twenty-six and 40/100 dollars (\$26.40); and that the entire amount of the lawful charges due from the said defendant to the said plaintiff, as aforesaid, was sixty-six hundred and twenty-three and 90/100 dollars (\$6623.90); that no part thereof, except the sum of sixty-three hundred forty-two and 30/100 dollars (\$6342.30) has been paid, although payment thereof has been duly demanded of and refused by the defendant herein, and that plaintiff thereby undercharged defendant two hundred eighty-one and 60/100 dollars (\$281.60) on the said shipment as aforesaid.

V.

That after defendant had paid plaintiff the sum of sixty-three hundred forty-two and 30/100 dollars (\$6342.30), as aforesaid, on said account upon

demand of defendant, plaintiff, believing defendant's demand to be correctly stated, and that under the tariffs filed, posted and published as aforesaid, the lawful charges were as stated by defendant, to-wit: fifty-eight hundred two and 30/100 dollars (\$5802.30) on the 30th day of January, 1915, paid to defendant and to its agent, in accordance with the provisions of said demand, the sum of three hundred eighty-seven and 70/100 dollars (\$387.70), and on the 17th day of February, 1915, paid to defendant and to its agent, in accordance with the provisions of said demand, the sum of two hundred and twenty-eight dollars (\$228), and plaintiff alleges that in truth and in fact the said account and demand of defendant was not correctly stated, and plaintiff thereby paid to defendant and its agent, on account of defendant's demand so made as aforesaid, and on account of plaintiff's error in the application of the rate established as aforesaid, on the shipment aforesaid, the sum of, to-wit: six hundred fifteen and 70/100 dollars (\$615.70), which was lawfully due from defendant to plaintiff in payment of the charges aforesaid.

VI.

That prior to the commencement of this suit, plaintiff in accordance with an agreement with its connecting carriers via the lines of which the said cars of cattle were transported, from Hereford, Texas, to the line of this plaintiff, paid such por-

tions of the tariff rate as alleged in paragraph IV of this complaint, as was and is due said carriers under the provisions of the said tariff, and that this plaintiff is now the owner of said account.

VII.

That although plaintiff has demanded of defendant, payment of the sum of \$281.60, so undercharged as aforesaid, and the sum of \$387.70 so refunded as aforesaid, and the sum of \$228.00 so refunded as aforesaid, defendant has failed and refused, and still fails and refuses to pay plaintiff the said sums or any part thereof; and there is now due and owing from defendant to plaintiff, the sum of eight hundred ninety-seven and 30/100 dollars (\$897.30) with interest on \$281.60 thereof from September 28, 1912, and with interest on \$387.70 thereof, from the 30th day of January, 1915, and with interest on \$228.00 thereof, from the 17th day of February, 1915.

Wherefore, plaintiff prays judgment against defendant in the sum of \$897.30, with lawful interest on \$281.60 thereof from September 29, 1912; with lawful interest on \$387.70 thereof, from the 30th day of January, 1915, and with lawful interest on \$228.00 thereof, from the 17th day of February, 1915, together with plaintiff's costs.

A. C. Spencer,

W. A. Robbins,

Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

I, A. C. Spencer, being first duly sworn, depose and say: that I am one of the attorneys for the plaintiff, Oregon Short Line Railroad Company, and its statutory agent in Oregon; that I make this affidavit for and on behalf of the plaintiff for the reason that said plaintiff, nor any of its officers upon whom service of summons might be made, are not residents of Multnomah County, State of Oregon; that all the material allegations of the foregoing pleading are known to me; that I have prepared the foregoing complaint, know the contents thereof, and the same is true as I verily believe.

(Sgd.) A. C. Spencer,

Subscribed and sworn to before me this 23rd day of October, 1916.

H. W. Berg,

(Seal)

Notary Public for Oregon.

My commission expires June 2, 1919.

Endorsed: In the District Court of the United States for the District of Oregon. (Title of Cause.) Amended Complaint. Filed Nov. 2, 1916. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 11th day of November, 1916, there was duly filed in said court an answer in words and figures as follows, to-wit:

ANSWER.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

Now comes the defendant and answers the complaint herein as follows:

It admits the allegations of paragraphs I and II of the complaint concerning the organization and business of plaintiff and defendant.

Except as herein admitted, defendant denies each and every allegation of the complaint.

Wherefore, defendant demands that plaintiff take nothing by this action and that it have judgment for costs and its disbursements herein.

Carey & Kerr and

Charles A. Hart,

Attorneys for Defendant.

State of Oregon, County of Multnomah, ss.

I, W. A. Willis, being first duly sworn, depose and say that I am secretary of Portland Cattle Loan Company, defendant in the above entitled action; that I have read the foregoing answer, know

the contents thereof, and that the same is true as I verily believe.

W. A. Willis.

Subscribed and sworn to before me this 10th day of November, 1916.

Oscar Furuset,

(Seal)

Notary Public for Oregon.

My commission expires December 1, 1916.

Endorsed: Filed Nov. 11, 1916. G. H. Marsh,
Clerk.

And afterwards, to-wit, on the . . . day of April, 1917, there was duly filed in said court a stipulation in words and figures as follows, to-wit:

STIPULATION.

Docket 7233.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,
tion,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

It is hereby stipulated by and between Charles A. Hart, attorney for the defendant Portland Cattle Loan Company, and W. A. Robbins one of the attorneys for the plaintiff Oregon Short Line Rail-

road Company, that trial by jury is hereby waived in the above entitled case and we hereby consent to said case being tried by the court.

Dated at Portland, Oregon, this 16th day of April, 1917.

Charles A. Hart,

Attorney for Defendant.

W. A. Robbins,

Of Attorneys for Plaintiff.

Endorsed: Filed April 20, 1917. G. H. Marsh,
Clerk.

And afterwards on the 16th day of April, 1917, the same being the 37th judicial day of the regular March term of said court; present the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

A jury having been duly waived by written stipulation of the parties made and filed before said time of trial, said action proceeded to trial before the Honorable Charles E. Wolverton, Judge of said court without a jury.

And afterwards on the 17th day of September, 1917, the same being the 66th judicial day of the regular July term of said court; present the Honorable Charles E. Wolverton, United States District Judge

presiding, the following proceedings were had in said cause, to-wit:

OPINION.

In the District Court of the United States for the
District of Oregon.

No. 7233.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

No. 7232.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Feeder Company, a corporation,
Defendant.

A. C. Spencer and W. A. Robbins for Plaintiff,
Carey & Kerr and Charles A. Hart for Defendants.
Wolverton, District Judge:

These cases were instituted to recover certain balances alleged to be due plaintiff as freight for shipments of cattle, arising by reason of alleged erroneous computations of freight when the shipments were made and settled for; the plaintiff being required to institute the actions under the Federal statutes. Several shipments are involved,

a statement as to one of which will suffice for illustration of the whole.

Forty-four carloads of cattle were shipped from Hereford, Texas, to Amarillo, Texas, the latter being a station on the Pecos & Northern Texas Railway, where the shipment was combined into 43 cars, 27 of which were transported thence over the lines of connecting carriers to Pocatello, Idaho, and the remaining 16 to Butte, Montana, where they were delivered to the shipper.

The plaintiff claims that, under Joint Live Stock Tariff No. 100-A, then in force, the proper charges on these shipments are made up as follows:

Local from Hereford to Amarillo, \$26.40 per car, and from Amarillo to Pocatello, \$116.50, making a total of \$142.90 per car for shipment of the 27 cars. To Butte, the same local from Hereford to Amarillo, to which is added \$125.00 to Dillon, Montana, and the local from Dillon to Butte, \$19.80; total, \$171.20.

The entire controversy centers about the local charge of \$26.40 from Hereford to Amarillo, the defendants insisting that Hereford is a common point with Amarillo, and that the rate designated under section 2 of the tariff constitutes the entire rate from Hereford to Pocatello. This depends upon a proper construction of the tariff. Referring to section 1 thereof, under the head of "The Pecos

& Northern Texas Ry. Co.," will be found lists of stations common with Amarillo, the rate basis being Amarillo; and other lists of stations carrying differentials with Amarillo, that is to say, the tariff indicating that certain sums should be added to or deducted from the Amarillo rate basis. By a note on page 24, it is explained that the differentials shown in section 1 are to be added to or deducted from the Amarillo rates as shown in section 2, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69. By the same note, it is further explained that, where no differentials are shown, the Amarillo rates as shown in section 2 are to be applied as indicated. By another note, explanatory of section 2, it is stated that rates shown in section 2, in columns headed "Amarillo," are to be applied from stations shown in section 1 as taking Amarillo rate basis, or same are to be used as a basis for arriving at through rates from stations shown in section 1 as taking differentials over or under Amarillo rates, where application and routing is provided on pages 56 to 69, inclusive, from such point of origin to destination station. On page 56 is found another note explaining application of rates, which reads:

"Rates provided herein from points of origin shown in Section No. 1 to points of destination shown in Section No. 2, will apply only via the

routes indicated in chart on page 57, except as provided in Item 350."

The exception is without application here. Note 1 to the above explanation further provides:

"Where route number is not shown there are no through rates applicable from the originating line to the destination line via any route except as specifically provided in Section No. 3."

These several explanatory notes respecting the application of the tariff must be construed together to ascertain their true meaning. Reading the explanatory note to section 1 by itself, and without reference to the succeeding notes, its meaning would appear to be plain that where there were differentials the rates shown in section 2 would not apply, unless the routing was provided on pages 56 to 69; but that, where there were no differentials shown, the shipment would take the section 2 rates without regard to whether the application and routing were provided on pages 56 to 69 or not. The note to section 2 merely emphasizes the thought that shipments from stations carrying differentials with Amarillo will take the through rate only where the application and routing are provided for on pages 56 to 69.

When, however, we turn to the note on page 56 respecting the application of rates, we are advised that rates from points of origin shown in section 1

to points of destination shown in section 2 will apply only via the routes indicated on page 57. This is a specific declaration, general in its scope, without reference to differentials, that the rates so provided will apply only via the routes indicated on page 57. The note thereto is but a reinforcement of the idea. Page 57 is, of course, included within the limitations of pages 56 to 69. So that these later explanatory notes are but a development of the intention which possessed the rate-maker from the beginning, and that must be construed to be that shipments from Amarillo common points, whether carrying a differential or not, shall not take the through rate unless where application and routing are provided on pages 56 to 69.

Recurring again to note to section 1, page 24, the words "as indicated" in the last clause as applying "where no differentials are shown," are susceptible of a construction, though not the natural one viewing the context, as signifying or denoting a reference to the preceding clause and also to the note to section 2, page 32, as this latter note refers back to the item on page 24. So that the aforesaid latter clause would read that the rates shown in section 2 are to be applied as indicated by these explanatory notes, and not by section 2. This idea harmonizes the seemingly inconsistent and incongruous explanatory notes.

But whatever may be the true rendering of the

notes to sections 1 and 2, the notes on page 56 explaining the "application of rates" are directly applicable to the present controversy, as no Oregon Short Line Railroad routing is shown of shipments coming from and over the Pecos & Northern Texas Railway on page 57; and, as we have seen, the regulation is general, and specifically limits the application of rates from points in section 1 to points of destination in section 2 to the routes indicated in the chart on page 57.

This construction of the tariff results in a finding for the plaintiff in each cause of action, and upon all the counts as prayed. The findings will be general, but judgment thereon will be withheld until the defendants have had an opportunity to present such findings as they may deem essential for reserving such questions for review as they may desire.

Endorsed: Filed Sept. 17, 1917. G. H. Marsh, Clerk. By K. F. Frazer, Deputy.

And afterwards, to-wit, on Monday, the 17th day of September, 1917, the same being the sixty-sixth judicial day of the regular July term of said court, present the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in the said cause, to-wit:

In the District Court of the United States for the
District of Oregon,

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

This cause was tried by the court before the Honorable Charles E. Wolverton, District Judge, on the merits, and now at this time the court files its opinion and findings of fact in words and figures as follows, to-wit:

"The above cause having been submitted to the court for decision without the intervention of a jury and the court now being sufficiently advised finds for the plaintiff in the sum of \$1,077.77."

(Signed) CHAS. E. WOLVERTON,

Judge.

Whereupon it is ordered that judgment upon the said findings be and the same is hereby withheld until the further order of this court.

And afterwards, to-wit, on the 29th day of September, 1917, there was duly filed in said court motion for entry of defendant's findings of fact and conclusions of law in words and figures as follows, to-wit:

MOTION FOR ENTRY OF DEFENDANT'S
FINDINGS OF FACT AND CONCLU-
SIONS OF LAW.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corpora-
tion,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

Now comes defendant and moves the court for
an order adopting and making and filing the fol-
lowing as its Findings of Fact and Conclusions of
Law in the above entitled action:

FINDINGS OF FACT.

I.

Plaintiff is a corporation organized and exist-
ing under the laws of the State of Utah, and dur-
ing the times stated in the complaint was engaged
in the business of transporting freight and passen-
gers as a common carrier in the States of Utah,
Wyoming, Idaho and Montana, and in such busi-
ness was subject to the Act to Regulate Commerce
approved February 4, 1887, and acts amendatory
thereof and supplementary thereto, and was at all
of said times engaged in the transportation of
freight for hire as a common carrier in connection

with other common carriers from points in the State of Texas and elsewhere to points in the States of Idaho and Montana, and particularly from Hereford in the State of Texas, to Pocatello in the State of Idaho, and from Hereford in the State of Texas to Butte in the State of Montana.

II.

Defendant is a corporation organized and existing under the laws of the State of Oregon.

III.

On or about September 28, 1912, A. G. Greenamyer delivered to Pecos & Northern Texas Railway Company at Hereford in the State of Texas, forty-four carloads of cattle for transportation by freight from Hereford, Texas, over the line of the Panhandle & Santa Fe Railway Company to Amarillo, Texas, and thence over the lines of connecting carriers, and over the line of the Oregon Short Line Railroad Company, plaintiff herein, to Nampa, Idaho, there to be delivered to the Portland Cattle Loan Company, defendant herein, the consignee; and the said railroads, as connecting carriers thereupon transported the said forty-four carloads of cattle from Hereford, Texas, to Amarillo, Texas, where the said forty-four cars were combined into forty-three cars, and were thereupon transported over the lines of connecting carriers, and over the line of this plaintiff to Pocatello, Idaho, at which

place twenty-seven of the said forty-three carloads of cattle, upon the order of defendant, were delivered to Portland Cattle Loan Company, the defendant herein, by said Oregon Short Line Railroad Company, this plaintiff; and thereupon defendant ordered this plaintiff to divert and transport sixteen of the said forty-three carloads of cattle to Butte in the State of Montana, and plaintiff thereupon transported the said sixteen carloads of cattle to Butte, Montana, at which place the said sixteen carloads of cattle were delivered to the Portland Cattle Loan Company, defendant herein, by plaintiff.

IV.

At the conclusion of said transportation defendant paid to the plaintiff the sum of \$6,342.30, upon the demand of plaintiff to cover the charges of plaintiff and its connecting carriers for the transportation of said live stock from Hereford, Texas, to Pocatello, Idaho, and Butte, Montana.

V.

Thereafter and on the 30th day of January, 1915, defendant presented claim to plaintiff for a refund of the sum of \$387.70, because of the fact that the plaintiff had failed to apply to that portion of the shipment terminating at Pocatello, Idaho, the rate for shipments terminating at Idaho Falls in the State of Idaho, and thereupon plain-

tiff agreed that the Idaho Falls rate was applicable and refunded to defendant the said sum of \$387.70. Before said refund was made the claim of defendant for the refund was passed upon by the General Freight Agent, Auditor, and Freight Claim Agent of plaintiff.

VI.

About sixty days after the making of said refund, plaintiff made demand upon defendant for additional freight charges and for the first time stated to defendant that plaintiff and its connecting carriers claimed that an additional charge was due for transportation, to-wit: a charge of \$26.40 per car for the transportation from Hereford, Texas, to Amarillo, Texas.

VII.

At the time of the transportation of defendant's cattle, plaintiff and its connecting carriers had duly filed with the Interstate Commerce Commission of the United States, and had posted and published pursuant to provisions of the Act to Regulate Commerce tariffs establishing the lawful charges to be made to all persons for the transportation of cattle in carload lots from Hereford, Texas, to Pocatello, Idaho, and from Hereford, Texas, to Butte, Montana. The tariff so stating said charges was known as Index No. 2050, Joint Live Stock Tariff 100-A, W. A. Poteet, I. C. C. No. 265, effective August 29,

1912. Said tariff provided a through rate of \$116.50 from Hereford to Pocatello, and \$134.80 from Hereford, Texas, to Butte, Montana. Both of said rates were plainly specified by said tariff as applicable to transportation between the points named. By an explanatory note subsequently made in said tariff it was stated that through rates previously shown would apply only via routes indicated in a chart which followed and in said chart no through route was shown from Hereford, Texas, on the line of the Pecos & Northern Texas Railway and Pocatello, Idaho, and Butte, Montana, on the line of plaintiff company; but no reference was given in the positive statement in said tariff of the through rates applicable to such shipments to the foot note referred to, and a preceding note in said tariff explained that the routing limitation referred to applied to stations taking a differential over or under Amarillo, Hereford not being such a station. The freight charges collected by plaintiff at the conclusion of the transportation less the refund made of the Idaho Falls-Pocatello charges were based on said through rates of \$116.50 per car and \$134.80 per car.

CONCLUSIONS OF LAW.

I.

The tariff of plaintiff and its connecting carriers duly filed and published according to law and

in force at the time of defendant's shipments was ambiguous in that it justified the charges actually collected, to-wit: on a basis of \$116.50 and \$134.80 per car, and in that in a subsequent portion thereof it undertook to deny such through rates and require the additional payment sued for in this action. Because of such ambiguity the lower rates were the ones applicable and were the only lawful charges established by said tariffs for the transportation of defendant's shipments.

II.

Defendant is entitled to a dismissal of this action and for judgment for costs and its disbursements.

Carey & Kerr and
Charles A. Hart,
Attorneys for Defendant.

Endorsed: Filed Sept. 29, 1917. G. H. Marsh,
Clerk.

And afterwards, to-wit, on Saturday, the 29th day of September, 1917, the same being the seventy-seventh judicial day of the regular July term of said court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

JUDGMENT.

No. 7233.

Now at this time this cause coming on for entry of judgment herein, plaintiff appearing by W. A. Robbins, one of its attorneys, and defendant appearing by C. A. Hart, one of its attorneys, and it appearing to the court that the respective parties, through their attorneys, entered into a stipulation in writing waiving a jury, and it therefore appearing that said case was called for trial before the Honorable Judge Wolverton on April 16, 1917, and at the conclusion of the trial the court took the case under advisement and requested the attorneys for the respective parties to submit memorandum briefs showing their theories of the application of the tariffs in question, and thereafter and on the 17th day of September, 1917, the court being fully advised in the premises, filed its finding in favor of the plaintiff in words and figures as follows, to-wit: (omitting title) :

"The above cause having been submitted to the court without intervention of a jury, the court being now fully advised, finds for the plaintiff in the sum of \$1077.70.

"CHARLES E. WOLVERTON,

"United States District Judge."

It further appearing to the court that on September 29, 1917, defendant served and filed in this court and cause, its motion for entry of defendant's findings of fact and conclusions of law, which motion was on said date, presented to and overruled by the court, to which order defendant excepted, and its exception was allowed, and thereupon plaintiff moved for a judgment in its favor, upon the findings heretofore filed, by the court in favor of the plaintiff. It is therefore,

Considered, Ordered and Adjudged, that the plaintiff Oregon Short Line Railroad Company do have and recover of and from the Portland Cattle Loan Company, the sum of \$1,077.70, together with interest thereon from September 17, 1917, until paid, and for plaintiff's costs and disbursements incurred herein, taxed and allowed at \$152.10, and that execution issue therefor.

Dated at Portland, Oregon, this 29th day of September, 1917.

CHAS. E. WOLVERTON,

United States District Judge.

Filed September 29, 1917. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 29th day of October, 1917, there was duly filed in said court, bill of exceptions in words and figures as follows, to-wit:

BILL OF EXCEPTIONS.

No. 7233.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,
Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

Be it remembered that on the 16th day of April, 1917, this action came before the court, Honorable Charles E. Wolverton, Judge, for trial, plaintiff appearing by W. A. Robbins, Esquire, its attorney, and defendant appearing by Messrs. Carey and Kerr and Charles A. Hart, its attorneys. Whereupon the following proceedings were had:

It appearing that by written stipulation of the parties duly made and filed before said time of trial a jury having been duly waived, the action proceeded to trial before the Honorable Charles E. Wolverton, judge of said court, without the intervention of a jury. Plaintiff offered evidence in support of the issues made by its complaint and defendant offered testimony in support of the

defenses alleged in its answer. There is attached hereto, marked "Exhibit A," and hereby made a part hereof a full and complete stenographic record of the testimony offered and received upon said trial, and of all of the proceedings had in the trial of said cause down to the close of the testimony offered by each of the parties respectively.

Thereafter said action having been taken under advisement by the court, Honorable Charles E. Wolverton, judge, an opinion was handed down and duly filed herein directing and making a general finding in favor of plaintiff, but deferring the entry of judgment until the defendant was given an opportunity to present findings deemed essential for observing questions for review.

Thereafter defendant duly served and filed its motion for the entry of special findings and conclusions of law in its favor, which said motion is in the following form, to-wit:

"Now comes defendant and moves the court for an order adopting and making and filing the following as its Findings of Fact and Conclusions of Law in the above entitled action:

FINDINGS OF FACT.

I.

"Plaintiff is a corporation organized and existing under the laws of the State of Utah, and during the times stated in the complaint was engaged

in the business of transporting freight and passengers as a common carrier in the States of Utah, Wyoming, Idaho, and Montana, and in such business was subject to the Act to Regulate Commerce approved February 4, 1887, and acts amendatory thereof and supplementary thereto, and was at all of said times engaged in the transportation of freight for hire as a common carrier in connection with other common carriers from points in the State of Texas and elsewhere to points in the States of Idaho and Montana, and particularly from Hereford in the State of Texas to Pocatello in the State of Idaho, and from Hereford in the State of Texas to Butte in the State of Montana.

II.

“Defendant is a corporation organized and existing under the laws of the State of Oregon.

III.

“On or about September 28, 1912, A. G. Greenmeyer delivered to Pecos & Northern Texas Railway Company at Hereford in the State of Texas, forty-four carloads of cattle for transportation by freight from Hereford, Texas, over the line of the Panhandle & Santa Fe Railway Company to Amarillo, Texas, and thence over the lines of connecting carriers, and over the line of the Oregon Short Line Railroad Company, plaintiff herein, to Nampa, Idaho, there to be delivered to the Portland Cattle

Loan Company, defendant herein, the consignee; and the said railroads, as connecting carriers thereupon transported the said forty-four carloads of cattle from Hereford, Texas, to Amarillo, Texas, where the said forty-four cars were combined into forty-three cars, and were thereupon transported over the lines of connecting carriers, and over the line of this plaintiff to Pocatello, Idaho, at which place twenty-seven of the said forty-three carloads of cattle, upon the order of defendant, were delivered to Portland Cattle Loan Company, the defendant herein, by said Oregon Short Line Railroad Company, this plaintiff; and thereupon defendant ordered this plaintiff to divert and transport sixteen of the said forty-three carloads of cattle to Butte in the State of Montana, and plaintiff thereupon transported the said sixteen carloads of cattle to Butte, Montana, at which place the said sixteen carloads of cattle were delivered to the Portland Cattle Loan Company, defendant herein, by plaintiff.

IV.

“At the conclusion of said transportation defendant paid to the plaintiff the sum of \$6,342.30, upon the demand of plaintiff to cover the charges of plaintiff and its connecting carriers for the transportation of said live stock from Hereford, Texas, to Pocatello, Idaho, and Butte, Montana.

V.

"Thereafter and on the 30th day of January, 1915, defendant presented claim to plaintiff for a refund of the sum of \$387.70, because of the fact that the plaintiff had failed to apply to that portion of the shipment terminating at Pocatello, Idaho, the rate for shipments terminating at Idaho Falls in the State of Idaho; and thereupon plaintiff agreed that the Idaho Falls rate was applicable and refunded to defendant the said sum of \$387.70. Before said refund was made the claim of defendant for the refund was passed upon by the General Freight Agent, Auditor, and Freight Claim Agent of plaintiff.

VI.

"About sixty days after the making of said refund, plaintiff made demand upon defendant for additional freight charges and for the first time stated to defendant that plaintiff and its connecting carriers claimed that an additional charge was due for transportation, to-wit: a charge of \$26.40 per car for the transportation from Hereford, Texas, to Amarillo, Texas.

VII.

"At the time of the transportation of defendant's cattle, plaintiff and its connecting carriers had duly filed with the Interstate Commerce Commission of the United States, and had posted and published pursuant to provisions of the Act to Regulate Com-

merce tariffs establishing the lawful charges to be made to all persons for the transportation of cattle in carload lots from Hereford, Texas, to Pocatello, Idaho, and from Hereford, Texas, to Butte, Montana. The tariff so stating said charges was known as Index No. 2050 Joint Live Stock Tariff 100-A, W. A. Poteet, I. C. C. No. 265, effective August 21, 1912. Said tariff provided a through rate of \$116.50 from Hereford to Pocatello, and \$134.80 from Hereford, Texas, to Butte, Montana. Both of said rates were plainly specified by said tariff as applicable to transportation between the points named. By an explanatory note subsequently made in said tariff it was stated that through rates previously shown would apply only via routes indicated in a chart which followed and in said chart no through route was shown from Hereford, Texas, on the line of the Pecos & Northern Texas Railway and Pocatello, Idaho, and Butte, Montana, on the line of plaintiff company; but no reference was given in the positive statement in said tariff of the through rates applicable to such shipments to the foot note referred to, and a preceding note in said tariff explained that the routing limitation referred to applied to stations taking a differential over or under Amarillo, Hereford not being such a station. The freight charges collected by plaintiff at the conclusion of the transportation less the refund made of the Idaho Falls-Pocatello charges were

based on said through rates of \$116.50 per car and \$134.80 per car.

CONCLUSIONS OF LAW.

I.

“The tariff of plaintiff and its connecting carriers duly filed and published according to law and in force at the time of defendant’s shipments was ambiguous in that it justified the charges actually collected, to-wit: on a basis of \$116.50 and \$134.80 per car, and in that in a subsequent portion thereof it undertook to deny such through rates and require the additional payment sued for in this action. Because of such ambiguity the lower rates were the ones applicable and were the only lawful charges established by said tariffs for the transportation of defendant’s shipments.

II.

“Defendant is entitled to a dismissal of this action and for judgment for costs and its disbursements.”

Thereafter and on the 29th day of September, 1917, this action came before the court upon plaintiff’s motion for entry of judgment upon the general findings of the court herein and upon a motion of defendant for findings and judgment in its favor, and the court having heard the parties thereupon made and entered its order overruling the motion

of defendant for findings and judgment in its favor and granting the motion of plaintiff for the entry of judgment in its favor. To the order thus made overruling its motion for findings and judgment in its favor defendant excepted and an exception was duly allowed.

Thereupon on said 29th day of September, 1917, judgment was duly entered in favor of plaintiff upon said general findings.

ORDER SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions having been presented to the court this 29th day of October, 1917, within the time allowed by order of the court to present the same and it appearing that said bill of exceptions was delivered to the clerk and served upon the plaintiff herein within the time allowed by order of this court, and that no amendments have been offered and no objection made to said bill of exceptions by plaintiff, said bill of exceptions is hereby certified to contain a full and correct record of all of the evidence and exhibits necessary for the presentation of the exception herein noted, and is a record of any and all other matters material to the decision of defendant's writ of error.

Said bill of exceptions is hereby allowed in the foregoing form this 29th day of October, 1917.

CHAS. E. WOLVERTON,

District Judge.

EXHIBIT A.

No. 7232.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corpora-
tion,

Plaintiff,

vs.

Portland Feeder Company, a corporation,

Defendant.

No. 7233.

Oregon Short Line Railroad Company, a corpora-
tion,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

Before Judge Wolverton.

Portland, Oregon, April 16, 1917-May 14, 1917.

W. A. Robbins for Plaintiff.

C. A. Hart for Defendants.

S. J. H. French	10	126
Geo. F. Anderson	43	
J. H. Lothrop	73	
R. A. Rankin	91	
G. M. Velguth	124	

Portland, Oregon, April 16, 1917. 2 p. m.

Mr. Hart: If your honor please, I should like

to inquire whether it is the desire of the plaintiff to try the two cases together. There are two cases of similarity.

Mr. Robbins: I think the cases should be tried together, your honor, but of course we should expect separate findings.

Court: You do not care to have them consolidated?

Mr. Robbins: I have no objection; either way that suits the court. The same witnesses will testify in both cases.

Court: I was wondering whether it would be better to consolidate the cases, or simply to make findings in both cases.

Mr. Robbins: I think there should be separate findings.

Court: Well, they can be tried together, and the court can make findings accordingly.

Mr. Robbins: I should think that would be the better plan. Don't you, Mr. Hart?

Mr. Hart: I guess so.

Mr. Robbins: Now, if the court pleases, in this case of *Oregon Short Line Railroad Company v. Portland Cattle Loan Company*, we filed an amended complaint, and I just discovered today that the stenographer in transcribing this complaint has made some errors in some of the figures. I would like to correct those figures by intelineation.

Court: Have you any objection to that, Mr. Hart?

Mr. Hart: I presume not, your honor. I would like to know what they are. These are under-charge cases. Your honor probably knows what they are, and knows that, while the public policy may require strict enforcement of tariffs, necessarily there is individual hardship, and it is our position, of course, that we are not going to concede anything in these cases. I don't want to interpose any unnecessary objections; at the same time, I want to preserve every right.

Court: I understand these are clerical errors.

Mr. Robbins: These are clerical errors, which change the figures some.

Court: Well, you can point them out to Mr. Hart. When he has had a chance to see them, the court will make a ruling.

Mr. Robbins: I can make them right now.

Mr. Hart: I have no objection.

STATEMENT OF CASE.

Court: Which case are you proceeding on now?

Mr. Robbins: The Cattle Loan case, your honor. I will offer the deposition of R. W. Kelley.

Mr. Hart: What does this go to show, may I ask?

Mr. Robbins: This covers the transaction of Butte.

Mr. Hart: Well, strictly, of course, we ought to have first the proof of the shipment, and that is the proof that has gone astray, as I understand it.

Mr. Robbins: That will be here after awhile. I will have to put it on this way until these other depositions come. They are floating around some place.

Court: Do you say those depositions are in town?

Mr. Robbins: They are supposed to be in town. They were mailed to the other court. The boy just tells me they are around town, and they are looking for them now.

Court: You might go on, then.

(Reading of deposition of R. W. Kelley.)

Court: Mr. Hart, will you admit that that shipment of 16 cars was made?

Mr. Hart: We will admit at least what this deposition aims to show. We will admit that the cars which have been just described were received in Butte, and were delivered to the Chicago, Milwaukee & Puget Sound Company for further transportation to Piedmont, Montana, and that Mr. Kelley, as agent for the Oregon Short Line Company, obtained a receipt from the Chicago, Milwaukee & Puget Sound Company for \$345.60, covering the freight from Butte to Piedmont.

(Reading of deposition completed.)

Mr. Hart: Now, that is the end of that deposition, and I move to strike it out for this reason, if your honor please: The complaint alleges that this particular shipment of 16 cars was destined to Butte, or was diverted to Butte and delivered to the defendant there. The proof shows that this shipment was not delivered to the defendant at Butte, but went on to Piedmont, Montana, on the line of the Chicago, Milwaukee & Puget Sound Railroad; and there is a vital point in that difference. The claim of the Oregon Short Line Company in this case is that they have got to collect this Hereford-Amarillo rate because there was no through rate, through route, between the Pecos & Northern Texas, where they originate, and the Short Line, where they were delivered; but these shipments were delivered on the line of the Chicago, Milwaukee & Puget Sound, and there was a through route between Hereford, on the Pecos & Northern, and the Milwaukee: so that it seems to me that the proof now is inconsistent with the complaint, and in a material respect.

Mr. Robbins: There is nothing inconsistent about that, your honor. It shows that 16 cars moved from Hereford to Butte, and when they got to Butte, the consignee sent them on to Piedmont, and that is the purpose of offering this deposition, to show these 16 cars so moved.

Court: You are seeking to collect this tariff on the shipment from Hereford to Butte, and not beyond that?

Mr. Robbins: To Butte and not beyond.

Court: Has that tariff been arranged beyond that?

Mr. Robbins: That moved under local, as I understand it. That is not involved.

Mr. Hart: This proof shows the shipment went right through.

Mr. Robbins: That local from Butte to Piedmont is not involved in this transaction.

Court: Let me understand. In this shipment there was included a local from Hereford to Amarillo, through rate from Amarillo to Butte, and then after that, from Butte to Piedmont, a local again?

Mr. Robbins: Yes.

Mr. Hart: But the point of my objection is this: The reason they are asking us to pay a local from Hereford to Amarillo is because they say the tariff provided no through rate, no through route between Hereford and the destination of these shipments, and they say in their complaint that the destination of this shipment was Butte, and there being no through route between Hereford, on the Pecos & Northern, and Butte, on the Oregon Short Line, therefore they could not apply any through

rate, and they had to collect the local from Hereford to Amarillo. But it appears from this proof that these shipments did not go to Butte, but went through Butte to a point on the Milwaukee Railway. Now, this same tariff does show that there is a through route and a through rate from Hereford, in Texas, to points on the Milwaukee. So that you have got a material difference there, and you have got a situation which does not give rise to the necessity of this collection from Hereford to Amarillo.

Court: I will overrule the objection. You may have an exception.

Mr. Hart: It is not fair to ask your honor to pass on the whole record, but I wanted to make clear my point now.

Court: Yes, I understand. You claim, then, that the charge was a proper charge, because there was a through rate?

Mr. Hart: Yes, that is, as to these particular Butte cars. Now, that is not the main ground of our defense. I do not want to be understood that that is the only reason I am asserting that there was no necessity for collecting this Hereford-Amarillo rate.

Deposition of C. J. Kelley offered in evidence, and read, with exhibits thereto attached.

Mr. Robbins: I now offer the deposition of John Hamilton.

Mr. Hart: We will admit that Mr. John Hamilton has testified that he recalls a shipment of 43 cars of cattle, billed from A. G. Greenameyer, Hereford, Texas, to the Portland Cattle Loan Company, arriving in Pocatello in October, 1912, and that a representative of the Cattle Loan Company, either Mr. Burke or Mr. Fleming, made settlement of the freight charges there at that time; that his book record shows that transaction, and shows that the amount paid by the Cattle Loan Company was \$7693.25, and that this amount of \$7693.25 consisted of freight charges and feed charges.

Court: That is from Hereford to Butte?

Mr. Robbins: This is part of the 43 cars, yes, he is testifying about.

* * * * *

Mr. Robbins: Now, we wish to offer that Exhibit E in evidence, your honor. It has just been marked for identification.

Mr. Hart: What is the purpose of it?

Mr. Robbins: It goes to show a portion of the shipment up there, and the charges that were collected on it.

Court: If I understand this right, there is no controversy about the shipments, nor is there any controversy about the amount of freight collected and the amount charged, and the difference is between the amount of freight charged and collected

and the amount of the freight which you claim ought to have been charged and ought to be paid. Cannot you agree upon a statement of that kind, and cut out all this evidence?

Mr. Robbins: I tried to, your honor, and do not see why we cannot. Counsel has practically admitted that, but since he does not specifically admit it, I am going to go through and try to prove the case.

Mr. Hart: I am ready to say to your honor now, I am free to admit all of the evidence, all of the allegations made with reference to this Pocatello-Butte transaction. That is, I am willing to admit everything that any of these witnesses at Pocatello and Butte can testify to. I do not want to fully admit everything with reference to the other end of it, because I want to see what that proof shows first, which I haven't had a chance to do.

Court: That is the Texas end of it?

Mr. Hart: Yes. But so far as the delivery of these shipments is concerned, so far as the collection of freight charges, all of the facts to which this Pocatello and Butte testimony is directed, I freely admit. I see no purpose in going over the testimony. I do not want to make any concession, or yield any point, that might be of disadvantage to my client. In this kind of a case, certainly if Mr. Robbins failed to prove his case, I ought to be able to take advantage of it. Now, then, I want to

facilitate the proof, and I want to agree to everything testified to by these witnesses.

Mr. Robbins: Well, that certainly will dispose of those witnesses there, your honor. If you will give me just a moment, I think I can dispose of most of these witnesses on that statement of counsel.

Court: The allegation in the complaint is that on or about the 28th day of September, 1912, this defendant caused Greenameyer to deliver to a certain railroad in the State of Texas 44 carloads of cattle. That is admitted, isn't it?

Mr. Hart: No, that is denied. They cannot prove that, if your honor pleases. There is a mistake there in their allegation. I want to see their proof on that score. But passing that, I want to admit most everything else. The point of it is this: That the allegation in the complaint is that this whole contract of shipment was made between Greenameyer and the Panhandle & Santa Fe Railway. That is not the fact. The shipment was made on the line of the Pecos & Northern Texas Railroad.

Court: Does that make any difference?

Mr. Hart: That is the foundation of the case. They are basing their case on the contract of shipment, and I have been waiting to see what their proof would be on that point. The rest of this stuff I do not care about.

Mr. Robbins: Your honor, that doesn't make a

particle of difference. The question is, was that shipment made, and did it take the rate applied to it? The only thing we have to decide is, did that shipment move, and is that the tariff rate applying on it?

Under Mr. Hart's admission, I can dispose of the proof of R. W. Kelley and C. J. Kelley—they are the Butte men. And that will dispose of John Hamilton, H. M. Perleywitz, J. F. Stewart, and W. E. Garvey, ticket agent at Pocatello. That will not dispose of L. R. Wood, though.

Mr. Hart: I admit that, too. Mr. Wood was auditor of the Short Line Railroad, and he testifies about the interline settlements.

Mr. Robbins: He admits interline settlements and the refunds. I don't see any need of reading that.

That is all the depositions we have here in the Cattle Loan case, up to this point. Now, we have some in the Feeder case.

Mr. Hart: The same admissions may be made in the Feeder case.

Mr. Robbins: Are they the same witnesses?

Mr. Rankin: Some witnesses, with the exception of the man receiving shipment at American Falls.

Mr. Robbins: That would be admitted also on the stipulation?

Mr. Hart: Yes.

Mr. Robbins: That disposes of the depositions which we have here now, your honor.

Mr. Hart: If I had had an opportunity to look at the depositions, your honor, I could have told in a minute whether or not there was any point to be made about them. But the Texas depositions have not come. I have had no chance to see whether they make the proof wanted, or whether there is any point to be made about them, or whether I could at once make an admission that would simplify the procedure. Can't we go on with the proof of the rate?

Mr. Robbins: Does your honor want to go on? I will go ahead, if your honor says so, at this time.

Court: I would rather go ahead, if we can.

Mr. Robbins: All right. I will go ahead.

S. J. H. French, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Robbins:

Your name is S. J. H. French?

A. Yes.

Q. And what is your business, Mr. French?

A. I am special rate and tariff clerk of the O.-W. R. & N. Company at Portland.

Q. As special rate and tariff clerk, are you familiar with the tariffs of the other roads, connecting lines, etc.?

A. I am.

Q. Now, how many years' experience have you had in interpreting rates, Mr. French?

A. About fourteen years: six years with the Northern Pacific and some eight years with the O.-W. R. & N. Company.

Q. Six years with the Northern Pacific and eight years with the O.-W. R. & N Company, you say?

A. Directly connected with tariff and rate work, yes.

Q. And where is your headquarters at the present time?

A. Portland, Oregon.

Mr. Robbins: If the court pleases, at this time we desire to offer in evidence certified copies of the tariffs which are applicable in this case. They are contained in two different certificates here, certified by the secretary of the Interstate Commerce Commission, as provided by the act.

Court: Those are the tariff rates?

Mr. Robbins: Yes, your honor, these are tariffs that were in force and effect at the time these shipments moved as certified by the Interstate Commerce Commission.

Received without objection, and marked "Plaintiff's Ex. 1" and "Plaintiff's Ex. 2."

Q. Mr. French, I will ask you if you have examined Plaintiff's Exhibits 1 and 2, at my request, in connection with this case?

A. I have.

Q. I will ask you, what is the effective date of those tariffs?

A. They were filed with the Interstate Commerce Commission April 13, 1909; and they were in force August 29, September 14, and September 28, 1912, the dates these shipments moved.

Q. Now, Mr. French, referring to those tariffs, I will ask you to explain how the rate is made up from Hereford to Amarillo on a caload of stock, of cattle?

Mr. Hart: The Supreme Court of Oregon has held that expert testimony on the subject of the contents of these tariffs is not admissible, in the case of *O. R. & N. Co. v. Coolidge*, in 116 Pacific. I do not urge that decision on your honor here with any particular force, because I believe the tariffs perhaps are unintelligible, or may be unintelligible to your honor. At the same time, strictly speaking, the tariffs are here, and we are at liberty each side to argue what we think they mean, and it is for the court to say what they mean. Now, if the court feels that testimony of this kind will aid it, I have

no objection to make, although I want it understood, of course, that this witness is merely voicing the plaintiff's idea of what the tariffs mean.

Mr. Robbins: Right along that line, your honor, the United States Supreme Court has said that the public is charged with knowledge of the contents of those tariffs; and I do not think there is one per cent of the public can read a tariff. I have been in this business 12 years, and I cannot read a tariff, and I do not believe your honor can. Now, here is a man that has put in his life at that business. I am asking him what those tariffs show. I propose to show where he is reading from. That is all I am asking him to do.

Court: I was going to remark that tariffs are sometimes very hard to understand, and if you have an expert on the subject, it might enlighten the court.

Mr. Hart: Of course, I expect to put on an expert myself. If we have one on one side, I want one on the other. I am perfectly willing to admit them without such expert testimony, because I think we can enlighten the court as to our side of it.

Court: Very well, I would be very glad to hear both sides.

Q. Proceed, Mr. French.

A. Hereford, Texas, is 47 miles south of Amarillo, and, at the time these shipments moved was located on what was known as the Pecos & North-

ern Texas Railroad, now the Panhandle & Santa Fe Railroad. The rate on cattle from Hereford to Amarillo at the time these shipments moved was \$26.40 for 36 ft. 6 inch car, and that rate is made up by using the Santa Fe System distance table 9900, I. C. C. No. 4763, which was in force August 29, September 14 and September 28, 1912, the dates these shipments moved, and shows the distance from Hereford to Amarillo 47 miles. A. T. & S. F. Tariff, I .C. C. 5820, Santa Fe System No. 6016-E, provides rate of 12 cents per 100 pounds of cattle, carload.

Mr. Hart: You are now explaining the basis of this local rate?

A. I am.

Mr. Hart: Why is that necessary?

A. Because it is a factor in the through rate.

Mr. Hart: It isn't possible that is material.

A. Carload minimum 22,000 pounds for cars 36 feet 6 inches and over 34 feet, \$26.40 per car. That is the authority for the rate from Hereford to Amarillo.

Mr. Hart: Let me ask if that is shown in either of the two certified copies of the tariffs you have before you?

A. It is.

Q. Then the rate from Hereford to Amarillo is \$26.40 a car?

A. For 36 ft. 6 inch car.

Court: That is what you call the local rate?

A. That is the local rate, sir, from Hereford to Amarillo. That is the only rate, in fact, and was at the time these shipments moved from Hereford, to Amarillo, Texas.

Court: There is no through rate from Hereford?

A. There was no through rate from Hereford to these points of destination.

Q. Now, then, what do those exhibits show there the rate is from Hereford to Pocatello; that is, was on the date in question of course?

A. From Hereford to Pocatello the rate was \$116.50, for 36 ft. 6 inch car. This is provided, or rather shown, Index No. 2050, page 50, Joint Live Stock Tariff 100-A, W. A. Poteet, Agent, I. C. C. No. 265, in force August 29, September 14, and September 28, 1912; and provided this rate of \$116.50, from Amarillo to Pocatello.

Court: That is from Amarillo?

A. From Amarillo to Pocatello.

Court: That is from Amarillo, not from Hereford?

Mr. Robbins: He will explain that in just a moment, your honor. It is necessary for him to explain Amarillo to Pocatello first.

Court: Very well.

A. From Amarillo to Pocatello, the point shown

in the tariff, your honor, is Idaho Falls. Pocatello is intermediate with Idaho Falls, and under the intermediate application the rate to Idaho Falls applies as a maximum at Pocatello. By adding these two rates together, the \$26.40 from Hereford to Amarillo as provided in that Santa Fe tariff 6016-E, that I have just quoted, plus the rate of \$116.50 from Amarillo to Idaho Falls, which applies as a maximum at Pocatello, you have the through rate from Hereford to Pocatello of \$142.90, for 36 ft. 6 inch car.

Court: Idaho Falls is how far from Pocatello?

A. Idaho Falls is—well, it is about 50 miles, I should say.

Court: Do you say the same rate applies to Idaho Falls as applies to Pocatello?

A. Yes, sir.

Court: Very well.

Q. Now, then, what do those exhibits show the rate from Hereford to Butte?

A. Well, from Hereford to Butte you would use the same tariff reference as from Hereford to Amarillo, which authorized the rate of \$26.40 I previously quoted, plus rate of \$125 for 36 ft. 6 inch car from Amarillo to Dillon, as shown in index 2060, page 50, Joint Live Stock Tariff 100-A, W. A. Po-teet, Agent, I. C. C. 265, in force August 29, September 14, and September 28, 1912, the date these

shipments moved; that is the rate from Amarillo, Texas, to Dillon, \$125 for 36 ft. 6 inch cars, which, plus the rate of \$26.40 from Hereford to Amarillo, same size car, made the two factors, or the rate from Hereford to Dillon. The farthest point north on the O. S. L. is Dillon, Montana, to which rates are provided from Amarillo; therefore, we must add the local rate from Dillon to Butte in order to make the through rate. In other words, we have the three factors—\$26.40 Hereford to Amarillo, \$125 Amarillo to Dillon, and \$19.80 from Dillon to Butte. The latter rate is authorized Index No. 15, page 9, O. S. L. Local and Joint Tariff 3281, I. C. C. 1469, in force August 29, September 14, and September 28, 1912. This tariff provided a rate of \$18 for 30 ft. car Dillon to Butte, and Supplement No. 14 to the same tariff, effective March 7, 1912, provided 110 per cent of this rate for cars over 33 ft. 9 inches to and including 36 ft. 7 inches. That would include 36 ft. 6 in. car, which made the rate \$19.80 for 36 ft. 6 in. car from Dillon to Butte. By adding the three factors from Hereford we have a total of \$171.20 from Hereford to Butte.

Q. Then, your testimony, as I get it, is Hereford to Amarillo \$26.40?

A. Correct.

Q. Hereford to Pocatello is \$142.90?

A. Amarillo to Dillon is \$125, Dillon to Butte \$19.80, making a through rate of \$171.20. I am not

figuring on the Hereford-Pocatello, Mr. Robins; I am figuring on the Dillon-Butte rate. That was the last one you gave me.

Q. I know it is the last one, but I am going over these again.

A. All right.

Q. Now, you first testified the rate from Hereford to Amarillo was \$26.40?

A. Correct.

Q. Now, what did you say the rate was from Hereford to Pocatello?

A. I said the rate from Amarillo to Pocatello was \$116.50, if you are going back to that.

Q. What is the total? What is the total charge?

A. The total charge from Hereford to Pocatello—is that what you are wanting now?

Q. Yes.

A. \$142.90.

Q. That is exactly what I said. Now, then, you also testified that the rate from Hereford to Butte is \$171.20?

A. Correct.

Q. All right. Now, then, let us turn to the Feeder Company a minute. I am now referring to the first cause of action in the Feeder case. What does the exhibit show the rate to be from Hereford to Monida, Montana?

A. The rate from Hereford to Amarillo is \$26.40, as previously stated. The tariff authorities quoted are the same. From Amarillo, Texas, to Monida, Montana, the rate is \$118.50 for 36 ft. 6 in. car. That rate is carried Index 2056, page 50, Joint Live Stock Tariff 100-A, W. A. Poteet, Agent, I. C. C. 265, in force the dates of shipment, August 29, September 14, and September 28, 1912. And those two rates—\$26.40 from Hereford to Amarillo and \$118.50 from Amarillo to Monida, make the through rate of \$144.90.

Q. I am now referring to the second cause of action in the Feeder case. What does that exhibit show the rate would be from Abernathy, Texas, to Pocatello?

A. Abernathy, Texas, was located on the at that time Pecos & Northern Texas Railroad, 105 miles southeast of Amarillo, and the rate from Abernathy to Amarillo was \$39.60 for 36 ft. 6 in. car. That rate is carried, or rather the basis for that rate, the Santa Fe System Distance Table 9900, I. C. C. 4763, which shows the distance from Abernathy to Amarillo 105 miles, and A. T. & S. F. Tariff, I. C. C. 5820, Santa Fe System No. 6016-E, which provides rate of 18 cents per hundred on cattle, carload, minimum 22,000 pounds, for cars 36 ft. 6 in. and over 34 feet. From Amarillo, Texas, to Pocatello, Index No. 2050, page 50, Joint Live Stock Tariff, 100-A, W. A. Poteet, Agent, I. C. C.

265, in force August 29, September 14, and September 28, 1912 provides rate of \$116.50 from Amarillo to Pocatello. These two rates added together produce a total of \$156.10 the correct through rate.

Q. Now, how about the rate from Abernathy to American Falls?

A. From Abernathy to Amarillo the same tariff above referred to authorized a rate of \$39.60 for 36 ft. 6 in. car, and from Amarillo to Pocatello the same tariff authorizes—

Court: That is \$116.50?

A. Index 2050, page 50, Joint Live Stock Tariff No. 100-A, W. A. Poteet, Agent, I. C. C. 265, in force at date of shipment, provides the rate \$116.50 from Amarillo to Pocatello; that being the Idaho Falls rate, Pocatello being intermediate. From Pocatello to American Falls the rate is \$14 for 36 ft. car; the authority for this rate being Index 244, page 12, Local and Joint Freight Tariff, O. S. L. No. 2062-B, I. C. C. 1781, in force August 29, September 14, and September 28, 1912, the dates these shipments moved.

Court: What was that rate from Pocatello to American Falls?

A. \$14, sir. American Falls is 50 miles west of Pocatello, on the O. S. L., and we add that \$14 for that 50 miles off to the Pocatello rate. These three factors, \$39.60 Abernathy to Amarillo, \$116.50 Am-

arillo to Pocatello, and \$14 Pocatello to American Falls, produce the true rate of \$170.10.

Q. So on the second cause of action, your testimony is, then, that the rate from Abernathy to Pocatello is \$156.10 and from Abernathy to American Falls is \$170.10?

A. Correct.

Q. Now, Mr. French, on what line of railroad are Hereford and Abernathy located?

A. They are located on the, at the time of movement, Pecos & Northern Texas Railroad.

Q. And what is the fact as to whether or not Amarillo is a junction point?

A. And Amarillo, it is one of the points north on the Pecos & Northern Texas Railroad at that time, now the Santa Fe & Panhandle.

Q. What line of railroad, then, extends from Amarillo to Texline?

A. Fort Worth & Denver City extends from Amarillo to Texline, and the Colorado & Southern from Texline to Denver.

Q. And then what road from Denver to Granger?

A. From Denver to Granger the Union Pacific; from Granger to Pocatello the O. S. L.

Cross Examination.

Questions by Mr. Hart:

Mr. French, I don't just understand how you get

at this local rate of \$26.40 from Hereford to Amarillo. Will you please take the tariff showing that rate and point it out to the court?

A. Yes, sir, I will be glad to point it out to the court. If your honor pleases, this is a little chart that I made for my own convenience, and here is Hereford, and here is Amarillo, and here is Abernathy. Now, this is an extract—

Q. You are referring now to Exhibit 2?

A. Exhibit 2 shows an extract of the A. T. & S. F.—Santa Fe System Distance Table No. 9900, and that shows the distance from Amarillo to Canyon City as 18 miles. Here is Amarillo and here is Canyon City. Now, from Canyon City to Hereford—here is Hereford—is 29 miles, making a through distance of 47 miles. Now, the rates on cattle from and to those points are carried in the Santa Fe System Tariff No. 6016-E; and this tariff is on file with the Interstate Commerce Commission under I. C. C. No. 5820; and that provides for distances of 50 miles, on cattle in carload, 12 cents per hundred pounds.

Court: This is less than 50 miles?

A. Yes; and so it says, "When exact distance is not shown, use next greater." We used 50 miles, although the actual distance is 47. Now, for 47 miles, or 50 miles as shown here, the rate is 12 cents, on cattle in cars. It says on cars 36 ft. 6

inches and over 34 feet; and the minimum is 22,000 pounds, which at 12 cents a hundred makes the \$26.40 from Hereford to Amarillo. Now, the same formula would be gone through from Abernathy, only the distance is 105 miles from Abernathy to Amarillo, and we use the 18-cent rate, because for distance of 110 miles, you see; it says, "Where exact distance is not shown, use the next greater," and we have used the next greater, 110 miles; the rate of 18 cents is used, which produces the \$39.60.

Court: You haven't got the mileage marked on here.

A. Yes, sir. Excuse me—105 miles. That is the tariff, and the only tariff they have providing a rate between those two points. And this is an extract of it.

Q. Now, just a minute. This is your conclusion, that these extracts are the only tariffs applicable to that Hereford-Amarillo proposition?

A. Yes.

Q. You haven't got the full tariffs here? You merely have sheets from the tariffs—extracts from the tariffs?

A. Well, this is the extract furnished by the Interstate Commerce Commission of the tariff applying between those points.

Q. Well, who is going to determine whether or not that is the one that is applicable—you or the

commission? The commission's certificate is simply that this is a true copy of that extract, isn't it?

A. Yes. But that is the tariff that authorized the rate between those points, and the only tariff they had at that time.

Q. That is your testimony to that effect, I understand, yes. But I don't want you to convey the impression to the court that the commission says that that is the rate from Amarillo.

A. Well, the commission certifies that.

Q. Certifies that that is a true and correct copy.

Court: How did they come to certify that? By inquiry from some one in order to get the tariff rates, or the basis for the tariff rates?

A. Did you write? I presume this was furnished on the request of the Oregon Short Line, your honor.

Mr. Hart: The point is, your honor, we don't ordinarily prove a rate by getting what some rate clerk conceives to be the item applicable—getting a certified copy of that. We should have a certified copy of the tariff.

Court: Have you got that?

Mr. Hart: No, I have not, as to that local rate.

A. I see the point Mr. Hart is making.

Mr. Robbins: Pardon me just a moment. Maybe I can answer your question right here. Well, go

ahead, we will find out—we will show you why they certified to that.

Mr. Hart: Let me place before your honor while I am questioning Mr. French a copy of this general live stock tariff. I don't mean the one quoting the local rate from Hereford to Amarillo—I mean the tariff quoting the live stock rates from Texas points to Idaho and Montana points.

Court: This is the through rate?

Mr. Hart: Yes; and that is a copy of this tariff which is Plaintiff's Exhibit 1.

Court: There is no question as to the through rate?

Mr. Hart: The question is whether or not the through rate from Amarillo was not also applicable from Hereford.

Court: Oh, yes.

Mr. Hart: And, of course, that is to be determined by a construction of this through rate tariff.

Q. Mr. French, the through rates from Amarillo and such points are shown in this Joint Live Stock Tariff No. 100-A, which is a part of this Plaintiff's Exhibit 1, are they not?

A. Yes.

Q. Now, this Joint Tariff 100-A is divided into three sections—section 1, section 2, and section 3,—is it not?

A. Correct.

Q. Section 1 undertakes to provide what is said to be the basis, from points of origin, for rates on range cattle and also horses? That is correct, is it not?

A. With certain differentials, yes.

Q. Yes. In other words, it names certain points which are said to be "base" points?

A. Yes.

Q. And from which through rates are applicable?

A. Yes.

Q. And then it lists stations in the vicinity of those base points, and gives the information about rates from those points, and as to whether or not the base point rates apply or differentials are applicable—that is, a greater or a less rate is applicable? That is correct?

A. Yes.

Q. So that in section 1 of this tariff we have a list of stations on all the Texas lines, or on most all of the Texas lines, and a statement, or rather information, as to each one of those points, showing whether or not the through base-point rate is applicable, or, if not, how much of a differential over or under the base-point rate is applicable? That is true, is it not?

A. It is true when qualified by the application in the tariff.

Q. Yes, now, we get at that a little later. But I refer you, first of all, then, to page 26 of the tariff, that is, section 1 of the tariff. Under the heading "The Pecos & Northern Texas Ry. Co." on page 26 appears a list of stations among which is the station of Hereford, and the index number given is 98. That is correct, is it not?

A. Yes.

Q. And directly opposite, under the heading of "Rate Basis" is the word "Amarillo"? That is correct, is it not?

A. That is shown there on that table.

Q. So that, so far as the tariff makes it applicable, Hereford gets the same rate as Amarillo?

A. To certain points as qualified by the application and routings as in the tariff. Not to points on the Oregon Short Line.

Q. Just a minute. That is your contention, I understand.

A. Yes.

Q. But we will get this step by step.

A. Yes.

Q. Except as may be qualified by something which may later appear in the tariff, we have here on page 26 of the tariff, a statement that Hereford gets the same rate as Amarillo?

A. To certain roads, quite true.

Q. To certain roads—yes, that is true?

A. Quite true.

Q. Now, then, we turn over to page 50 of the tariff; and I refer you there to the middle paragraph, headed "Oregon Short Line R. R." But let me ask you first if this section 2 does not undertake to provide the rates in dollars and cents from the originating points—originating base points, we will say, in Texas to points in the Northwest?

A. It undertakes to provide through rates from Amarillo to points on the O. S. L.

Q. It undertakes also to provide through rates from El Paso and Deming, doesn't it?

A. Oh, to certain roads.

Q. From these base points to certain destinations?

A. Yes, as provided in the tariff.

Q. Now, then, I ask you to look at this middle paragraph on page 50 of section 2, and say whether or not this tariff does not show a rate of \$116.50 from what is called the "Amarillo Group" to Idaho Falls?

A. It does from the Amarillo Group to Idaho Falls, on cattle in lots of ten cars or more.

Q. Yes. And that is the basis of your statement to the court awhile ago that the through rate from Amarillo to Pocatello was \$116.50?

A. From Amarillo, yes.

Q. From Amarillo only, you said?

A. From Amarillo only.

Q. Now, this tariff section 2, this paragraph of it, quotes this rate from the Amarillo Group? That is true, isn't it?

A. Yes.

Q. And then we go back to section 1 of the tariff to find out what the Amarillo Group is, and we find, do we not, on page 26 of the tariff, the list of stations which are included in the Amarillo Group? That is true, isn't it?

A. To certain points on certain lines, Mr. Hart, but not for the O. S. L.

Q. We will get at this qualification a little later. I know how keenly you feel about it, but let us get at this step by step. We find on page 26, do we not, that list of stations comprising the Amarillo Group?

A. You do.

Q. In that list of stations we find the station of Hereford?

A. Hereford.

Q. So that, unless there is some limitation in this tariff which denies that rate, these two combinations, this section 1 and section 2, would put Hereford in the Amarillo Group, and give it the Amarillo rate? That is correct, is it not?

A. But I claim there is a restriction.

Q. I know what you claim, but please answer my question. Except for the limitation which you think there is in the tariff, we have here explicitly Hereford in the Amarillo Group?

A. Yes.

Q. All right. Now, let us hunt up this limitation.

Mr. Robbins: You may make any explanations you like of those answers, and qualify them as you go along.

Mr. Hart: I will try to be fair with Mr. French.

Q. Let us get at this limitation which you think prevents Hereford from being in the Amarillo Group. I refer you now to page 24 of the tariff. Page 24 gives an explanation of section 1 of the tariff, does it not?

A. Yes. It mentions there "Item 200—Governing use of differentials shown in Section No. 1, pages 24 to 31 inclusive."

Q. Let me read the first paragraph of that explanatory note to you. It says: "The differentials shown in Section No. 1 are to be added to or deducted from the Amarillo, El Paso or Deming rates as shown in Section No. 2 hereof, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69."

A. "Where application and routing is provided on pages 56 to 69."

Q. Yes. That is your point, then? That is the whole point in it, is it not? Your whole idea is, in using this Section No. 1, and in finding out that Amarillo includes Hereford in its group, we have got to take into consideration this explanation which says you use these differentials "where application and routing is provided on pages 56 to 69"?

A. Not only that, but there are other provisions in the tariff which are specific, and restrict the rates so that they do not apply to points on the O. S. L. from south of Amarillo.

Q. All right. Let us turn to page 56, if you please. Let us see what this limitation is which is to be taken into consideration in applying these differentials. Page 57 is a chart, which is called "Chart of Routes," is it not?

A. It is.

Q. Yes. And on the opposite page, page 56, there are certain explanations showing how that is to be understood?

A. Yes.

Q. And that explanation contains, under the heading "Note 1," Item 360, "Where Route Number is not shown there are no through rates applicable from the originating line to the destination line via any route except as specifically provided in Section No. 3." Now, then, you turn to your chart opposite, and you get the point at which the Oregon

Short Line column and the Pecos & Northern Texas column meet, and there is no route number?

A. Correct.

Mr. Hart: Does your honor see that?

A. Two little dots, right down the column of the O. S. L. and then across from the Pecos & Northern Texas.

Q. You get no number?

A. There is no routing there.

Q. So that, applying that explanation there, we have a situation in which there is no route number, and therefore no through rate, from the Pecos & Northern to the Oregon Short Line?

A. Correct.

Q. And that is your reason for saying that the Amarillo rate cannot be applied from Hereford?

A. From Hereford.

Q. All right. Now, then, we were referred to this section 3, to these pages 56 and 57, we were referred to those pages when we were at section 1 finding out how to apply this group basis, were we not?

A. Yes.

Q. And we had this explanation, that "The differentials shown in Section No. 1"—I am now reading from this explanation which precedes section 1—we were told that "The differentials shown in Section No. 1 are to be added to or deducted from

the Amarillo rate, to arrive at the through rate, where application and routing is provided on pages 56 to 69." So that if no through routing was provided on pages 56 to 69, then we could not apply these differentials? That is true, is it?

A. Well, the chart on page 69 shows—or what is the page, 56?

Q. 57.

A. The chart on page 57 shows a blank space from Pecos & Northern Texas Railroad points to points on the Oregon Short Line. Therefore there is no routing provided, and consequently the rates from points on the Pecos & Northern Texas Railroad would not apply to Pocatello, or Dillon, or Butte, or points on the O. S. L.

Q. Your reason for saying that is because section 1 here explains that these differentials which are allowed above or under the basing rates, above or under the Amarillo rates, can only be applied when you have got a route number—when you have got a through route? That is the point, is it?

A. Yes, there are quite as many blank spaces on that page 57, Mr. Hart, as there are routings shown.

Q. All right. We understand that. I just want to make sure that that is the basis of it all.

A. Yes.

Mr. Hart: Section 1, as your honor knows, states these base points—states what stations take the same rate, what stations have differentials.

Q. And then we come to this explanation of section 1, which says the differentials shown in section 1 are to be added to or deducted from the Amarillo rate so as to arrive at the through rate, where there is an application and routing shown on page 57 of the tariff?

A. Yes.

Q. Now, then, having settled that, let us get to the following paragraph of this explanation of section 1, and I refer you to that, page 24, and I read this: "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in Section No. 2 are to be applied as indicated." Now, do you find any reference whatsoever in that paragraph to pages 56-69 of the tariff and the routing application?

A. That paragraph refers to rates to points where rates are authorized. You referred to Piedmont a short time ago, Montana, on the C. M. & St. P. The rate would apply by Council Bluffs, where the C. M. & St. P. would get their haul to Piedmont, get the long haul, that rate would apply via that route. But apply that rate by the Colorado Southern, and the Fort Worth & Denver City, and the Pecos & Northern Texas up to Granger, plus our rate to Dillon, and then the rate to Butte, and then through the other way, the Milwaukee are entitled to their local from Butte to Piedmont. That clause one applies, Mr. Hart, on shipments as authorized

to destinations on different lines, as authorized by the tariff. But under the application on page 56, if I am not mistaken, of the tariff, you will find—let me read that please. Page 56. You will find a clause here in Item 360: “Rates provided herein from points of origin shown in Section No. 1 to points of destination shown in Section No. 2, will apply only via the routes indicated in chart on page 57, except as provided in Item 350. Note 1.—Where route number is not shown there are no through rates applicable from the originating line to the destination line via any route except as specifically provided in Section No. 3.” Section 3 is miscellaneous rates. Then it says: “Note 2.—The insertion of a route number is not to be construed as indicating that rates named will apply from all points on the originating line to all points on the destination line via any or all intermediate lines. The data shown on pages 58 to 69 inclusive opposite the route number indicated specifically describes the points of origin, the routes and the points of destination.” Now, I would like to elaborate here a little.

Q. You haven’t got the point of my question. I don’t want to cut in on your explanation.

A. Excuse me a moment. I would like to illustrate. We have certain rates from interior points on our line—like Walla Walla and Pendleton, on Camas Prairie Railroad, which you know is oper-

ated by the O.-W. and Northern Pacific alternate years, as party to that tariff. The common point rates do not apply from certain points, like Grangeville, there are arbitraries or differentials, or there may be local rates provided for that point. The same way with Portland, for instance, to Eastern territory, the North Coast terminal rates will apply; whereas if the shipment originated at Estacada, for example, the local rate from Estacada into Portland would be added to the through rate to Kansas City, or New York, or New Orleans. Now, in this instance, there is no specific routing provided from Hereford or Abernathy; consequently we must use the local rate from those points to Amarillo, the basing point, plus the rate from Amarillo to these Oregon Short Line points, for the reason that there is no rating shown in this tariff to Oregon Short Line points; and if we concede, your honor, that this tariff authorizes through rates from Hereford and Abernathy to points on the Oregon Short Line, then that concession must void every blank space on this page, which is put there—the blank space is put there to illustrate the fact that the through rates do not apply from those points; and that is the only difference between the numbered spaces, where the routings do apply, and the blank spaces, where the routings do not apply. Now, that is my construction of the tariff.

Q. Amarillo is on the Pecos & Northern Texas, is it not?

A. Amarillo is on the Pecos & Northern Texas.

Q. And there isn't any question but what there is a through rate and a through route from Amarillo to Pocatello?

A. Conceded.

Q. Yes, sir. So that we cannot read this quite literally, can we, this chart, where it says there are no through rates from Pecos & Northern points to Oregon Short Line points?

A. This Amarillo happens to be the basing point there. El Paso or Deming might be the basing point from some other territory. But you cannot, Mr. Hart, read into that tariff an application that is not there; and I do not consider that there is a routing authorized in that tariff.

Q. Supposing there is not, we have a through routing authorized from Amarillo, on the Pecos & Northern, to Pocatello, in Idaho, on the Oregon Short Line?

A. Admitted.

Yes. Now, then, the sole question is, have the makers of this tariff undertaken to extend that Amarillo rate to Hereford and absorb it in any way they choose in their division?

A. There is, as you said, a through rate from Amarillo to Pocatello. There is not a through rate

from Hereford or Abernathy, nor is there any authority for it in the tariff, because the routings are not specified from Abernathy or Hereford. I admit there is a through rate from Amarillo to Pocatello. I quoted it—\$116.50.

Q. Let us get back, if you please, where you were when you started this explanation. Take this section 1 again, on page 24 of the tariff, which explains how these groupings are to be taken, and how the rates applicable from grouping are to be applied, and we have this explanation which says, so far as differentials are concerned, differentials over or under the Amarillo rate, they are to be added or deducted to make the through rate, where application and routing is shown on page 57, etc.

A. Yes.

Q. And you say, then, that in order to use those differentials you have got to go back and see whether there is a routing?

A. Precisely. But you are—

Q. Yes. Now, just a moment. The next paragraph deals with cases where there are no differentials shown?

A. Yes, sir.

Q. Now, as to Amarillo and Hereford there is no differential, according to this grouping, Hereford takes the same rate as Amarillo?

A. Not to points on the O. S. L., Mr. Hart.

Q. Well, you are going back to the end of the tariff again. I ask you if, in section 2 of this tariff, Hereford is not shown to be in the Amarillo group?

A. Excuse me a moment. You are using the description there referring to group one of the tariff. You are not using the application of rates, which is authorized only in one place in the tariff, and that is page 56.

Q. I am trying to do what the shipper would do if he was endeavoring to get at the correct rate.

A. Precisely.

Q. Now, this explanation of the groupings has two clauses. The first refers to instances where there are differentials—in other words, to cases where there is a small addition to or deduction from the Amarillo rate?

A. Correct.

Q. That is the first paragraph; and it says you can use those differentials only when you have a routing and application as shown in the end of the tariff?

A. Yes, sir.

Q. In other words, you are given a specific reference to go to the tariff and find out whether you have got your through routing and application?

A. Yes.

Q. Now, then, you come next to the case we are interested in here?

A. Yes.

Q. That is, where there are no differentials shown. In other words, where the Amarillo rate is said to be the same as the Hereford, and where these lists of stations comprising the Amarillo group take the same rate as Amarillo, so far as section 2 is concerned. Now, look to your explanation to find out how you are going to apply that situation, where there are no differentials, and the explanation is that "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in Section No. 2 are to be applied as indicated."

A. "As indicated."

Q. Now, will you tell the court—

A. Excuse me, Mr. Hart—"as indicated."

Q. Will you tell the court why it is necessary for any one to go one step farther when he has secured that information—he has gone to the index and been referred to section 1, to find that Hereford is grouped with Amarillo; then he has gone to section 2, to find that the Amarillo rate is \$116.50; and then this explanation that where no differentials are shown the Amarillo rate is to be applied—no reference to the routing at the end of the tariff?

A. Well, if it pleases your honor, I have admitted that there are through rates from Amarillo to Pocatello, which is the Idaho rate, from Amarillo to certain other points on the Oregon Short

Line; but those differentials, or the through rates, as authorized, based on the Amarillo rate, from Hereford or from Amarillo, apply to C. B. & Q. station—to C. M. & St. P. stations—to Colorado & Southern stations—to Denver & Rio Grande stations; consequently they say “as indicated;” and under the application, your honor, on page 56, they say that the rates will apply under the routings as authorized by the application; and then on page 57 on your chart they indicate as plainly as they can—they cannot show all the stations on the Oregon Short Line—they indicate as plainly as they can by dots or blank spaces that there is no through routing, consequently no through rates, from Abernathy or Hereford, or any point, in fact, south of Amarillo. I am only admitting there are through rates from Amarillo to points on the Oregon Short Line. Under that tariff, there are no through rates from points south of there to points on the Oregon Short Line.

Q. Well, then, Mr. French, do I understand you to say that the words “as indicated” at the end of that sentence are to take the place of the last clause of the preceding sentence? In other words, they are intended to refer you to page 56 and following of the tariff for routing?

A. You have only taken the description there as to your first section of your tariff, Mr. Hart.

Q. Yes, but you said a moment ago—

A. Excuse me a moment.

Q. All right.

A. You must consider that the second section of the tariff names the rates from Amarillo to points on the Oregon Short Line.

Q. Yes.

A. I have not admitted that rates are provided from points south of Amarillo. Now, then, having those through rates from Amarillo, you only have them where the routing is shown by numerals on the chart on page 57; but you haven't got them from other points, because under your application, which is the key to the instructions in the tariff, which is the same as our application under our transcontinental tariff—we have rates to North Coast terminals—we have rates to Oregon points and to Spokane points—you couldn't use the North Coast rates to all of the interior.

Q. If it is not necessary, then, for us to be given a reference to any routing or application when we look up these rates—

A. Certainly, sir, that is the first thing you refer to in a tariff.

Q. Wait a minute. (Continuing), why is it necessary, when we are speaking of differentials, taking a station which is near Amarillo, and this tariff, section 1, shows a differential of \$5.00 less. Now, we look at the application—we want to know

whether we are going to get that differential, or whether we will have to pay the local rate to Amarillo. We look at this explanation preceding section 1, and we see it says this differential we can only obtain where there is application and routing provided on pages 56 to 69?

A. Yes.

Q. So we know that, when we have this differential of \$5.00 less, we can only use it and avoid the local rate when there is this application and routing?

A. Yes, sir.

Q. Now, then, we come to the next station which is shown to be in the Amarillo group, without any differential, and we look again to this explanation to see whether we are going to be able to get that Amarillo rate, and we don't find any reference in that explanation to any routing or application. We find merely the statement that "Where no differentials are shown, the Amarillo rate as shown in section 2 is to be applied as indicated?"

A. *As indicated.* Certain lines are agreeable to the application of the Amarillo rate to points on their line. The Milwaukee and the Burlington and other lines. The Oregon Short Line is not.

Q. So the words "as indicated" are what you think will give you the reference?

A. I do, because in that particular section of

the tariff—now, you are not taking the other portion of the tariff, which is on page 56—the application of the tariff is the key to the situation, and that specifically states, Mr. Hart, page 56, that the rates will not apply except where the routings are specified in the chart on page 57. You find a blank space on page 57.

Q. Now, Mr. French, we will suppose these tariffs, of course, are open to shippers and railroads alike, and the shippers are charged with knowledge of them?

A. Yes.

Q. So that, theoretically at least, they are supposed to be explainable—supposed to be readable by the shipper who comes to get a rate?

A. Yes.

Q. Now, the shipper comes in this instance to find the rate from Hereford to Pocatello, and he goes to the index to find Hereford first, and he looks in the index of points of origin, and he finds on page 5 of the tariff Hereford, Texas, P. & N. T. Ry., and he is referred to item 98 of the tariff. Then we look up this item 98, and we find Hereford listed under the heading, "Pecos & Northern Texas Railway Company," and giving it the rate basis of Amarillo. Now, that is what the shipper does. He finds first of all, by reference to the index, that from Hereford on the Pecos & Northern Texas Railway—or that is, that Hereford is in the

so-called Amarillo group. Now, then, he goes to Amarillo. He looks up and finds out what the rate is from Amarillo, and he goes to the index to look up Amarillo, and he finds the reference then to Amarillo, and he looks for his destination. He wants the rate from Amarillo to Pocatello or Idaho Falls, and he finds in section 2 these rates from Amarillo to Idaho Falls, and on page 50 of the tariff he finds Oregon Short Line points and the rates from Amarillo, and he finds the \$116.50 rate from Amarillo to Idaho Falls. Now, then, why should a shipper go farther in his effort to learn the rate, when he goes to that index and he finds Hereford listed as Item 98, and he goes to Item 98 and he finds that Hereford is included with Amarillo, and he goes to the index and finds that Amarillo is listed as giving a rate to Short Line points of \$116.50? Isn't that the end of it?

A. Well, I am not going to criticise the law, but the law, as you know, charges the shipper with the knowledge of the rates. Now, if he doesn't find those rates, want of knowledge on his part is no excuse.

Q. That is all?

A. And my interpretation of this tariff, after numerous years of experience, which is made condensed under the rules of the Interstate Commerce Commission, would not permit the application of that tariff as you wish it to be applied.

Court: Has the Interstate Commerce Commission ever construed that tariff? I mean, that tariff with the conditions imposed by those notes?

A. They have never criticised it, sir, to my knowledge. It was filed by Mr. Poteet as agent, and, as far as I know, it was accepted by the commission. We have attempted on some occasions to make a paragraph explain the application of a tariff, where wharfage and other terminal charges are involved, from numerous points all over the country, and frequently our tariffs have been returned for more detail or more definite information before the commission would accept them. Now, this tariff was published and filed with the commission in 1912, and of course I don't know—I didn't publish the tariff; whether Mr. Poteet ever received any criticism from the commission, I don't know. But I do know that, when we have to publish tariffs under certain prescribed forms, with a certain number of pages and index, and all the rest of it, we are often put to it to try and get it in as condensed form as possible, making it as explicit as possible, and yet as concise as possible; and that tariff, to my knowledge, has never been criticised. It may be.

Mr. Hart: Of course, that is not of importance anyway, whether it has or has not. This witness has nothing to do with its application or with its filing.

A. I don't think, though, that any experienced railroad man would pick up that tariff, in view of the blank space on page 57, routing, and construe it to apply.

Mr. Hart: That is argumentative.

Court: The thing I was trying to get at was whether or not this tariff has ever been brought before the Interstate Commerce Commission for the purpose of determining how to construe it.

Mr. Hart: Oh, I don't think so, your honor.

A. Oh, I don't think so.

Mr. Hart: As I said in my opening, the carriers themselves construed it our way for several years, because they collected the lower rate—\$116.50—did apply it from Hereford, and checked and rechecked it. It was only after a number of years had elapsed, and after these various checkings, that some one made this discovery which Mr. French has testified to. So that it is our claim that, as a practical matter, the practical construction given it by the railroads for years shows the application of this Amarillo rate to Hereford.

Court. Well, the application is very clear if there is no reference made to those notations that are made on page 56.

A. Page 57 on the chart.

Court: Yes, 56 and 57, the application of the rates. No. 350 and No. 360. If it were not for

those notes there, the application would seem to be very clear.

A. Yes. But, if your honor please, that is the only place—there is always a place in the tariff for the application, because there are so many rates, and so many roads parties to the tariff, that rates will apply to one line where they will not to another. Consequently a tariff cannot be taken on its face. It must be qualified with instructions or application. And under that application in the tariff, which is the first thing an experienced rate man looks at, you get a qualification of the rates there.

Mr. Hart: These tariffs are not to be made up by rate experts, I want your honor to understand. They are intended to be made up for the benefit of the shipper, and the Commission has repeatedly said they must be clear, they must not be ambiguous, and if there is any ambiguity it is to be construed in favor of the shipper. But I don't want to get into an argument of the case now, and that is what we have really been doing. I want to reserve that till later. That is all my questions with Mr. French.

Redirect Examination.

Q. Mr. French, did I understand you to say there were through rates named in this tariff from Amarillo in connection with the P. & N. T.?

A. There is a through rate, Mr. Robbins, named from Amarillo to points on the O. S. L., yes.

Q. In connection with the P. & N. T.?

A. In connection with the P. & N. T., yes, sir. Well, Amarillo was on the Pecos & Northern Texas.

Q. It is also on the Fort Worth & Denver City, isn't it?

A. Yes; but the question asked was, was there a through rate from Amarillo to points on our line? Well, Amarillo is on the Pecos & Northern Texas Railroad just as much as it is on the Fort Worth & Denver City, and there is a through rate there under the tariff. There is nothing to that point.

Q. Well, I am asking you, if you are testifying there is a through rate from Amarillo in connection with P. & N. T. business?

A. There is a through rate from Amarillo. At the time these shipments moved the through rate from Amarillo, which was a point on the Pecos & Northern Texas, was \$116.50, for example, to Pocatello. That plus the rate from Hereford or Abernathy to Amarillo made the through rate.

Q. Now, I am asking you if those through rates do not apply to Amarillo in connection with the Fort Worth & Denver City?

A. Yes, they apply in connection with Fort Worth & Denver City, the Colorado & Southern, and the Union Pacific, and the Oregon Short Line.

Court: Fort Worth & Denver City doesn't show a blank?

A. Well, that is the line north from Amarillo, your honor, which has since been—the old name of that line was—here is the Pecos & Northern Texas up here to Amarillo—then this was the Southern Kansas Railway of Texas at one time, but it has since been amalgamated into the Panhandle of Texas, the Santa Fe & Panhandle of Texas, because, I believe, the local laws of Texas require local names of railroads, or something to that effect. While the Fort Worth & Denver City is now, I think, the old Kansas, or Southern Railway of Kansas. I think that is the situation, but I am not exactly clear on that. But I don't quite know the point that counsel wished to make. Would you like this, judge? It shows, possibly, a little bit of the situation.

Court: Do you want this marked?

Mr. Robbins: No, I am not particular about marking that.

Court: It may be marked.

Mr. Robbins: If your honor wants it, we will offer it.

Court: Yes, well, let it be offered.

Marked "Plaintiff's Exhibit 3."

Excused.

Mr. Hart: I would like to put Mr. Lothrop on tonight, if I could.

Mr. Robbins: I couldn't very well assent to that, your honor.

Court: Very well, if you object to it, we will adjourn until tomorrow morning.

Adjourned until 10 A. M.

Portland, Oregon, April 17, 1917.

George F. Anderson, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Robbins:

Q. Your name is George F. Anderson?

A. Yes, sir.

Q. What is your business?

A. Traffic manager of the Union Meat Company, North Portland.

Q. Have you any connection with either one of the defendants in this case?

A. Why, I have in a way looked after the checking of their freight bills and freight matters.

Q. You act as traffic manager?

A. For both concerns.

Q. For both concerns?

A. Yes.

Q. You were so acting in 1912?

A. Yes, sir.

Q. Now, I will ask you if in 1912 you had any transactions in connection with these shipments which are in controversy here with the Short Line?

A. Not in 1912.

Q. Well, subsequent to that?

A. Subsequent to that time, yes.

Q. And what is the fact as to whether or not you filed a claim there for a refund on one of these shipments on the Loan case?

A. Involving the local rate from Idaho Falls down to Pocatello?

Q. Well, you did file a claim?

A. Of \$20 a car.

Q. You filed a claim in the Loan case?

A. Yes.

Q. How much was that claim you filed?

A. Well, there were two claims.

Q. Well, take one at a time—take the first one of January 30, 1915.

A. That involved 17 cars, was \$340, and we figured the interest for two years four months at six per cent, \$47.70, making a total of \$387.70.

Q. Now, have you got your reference there, your claim number?

A. Yes.

Q. Is that the Short Line's 8274-13-9?

A. Yes, sir.

Q. And that \$387.70, then, covered \$47.70 interest?

A. Yes, sir.

Q. Now, then, the other claim you speak of, is that carried under Short Line 8274-31-9?

A. Yes, sir.

Court: What is the date of that claim?

A. The date on the first one is January 30, 1915, and the second claim is February 5, 1915. That was approximately two years and a half after the shipment had moved.

Q. And how much was the amount of that, Mr. Anderson?

A. The amount of claim as presented was \$200 involving an overcharge on 10 cars, and with interest for two years four months at six per cent, \$28—total \$228.

Q. Now, you presented these claims on behalf of the Loan Co.?

A. Yes, sir.

Q. Acting as their agent?

A. Acting as their agent.

Q. You held a written assignment from them, I presume?

A. I did.

Q. Now, those claims were paid to you as agent for the Loan Company, were they?

A. Yes, sir.

Q. The document which you are referring to now is what?

A. That is O. S. L. voucher, payable in my favor as agent.

Q. And this covers the \$228 refund?

A. And this one is payable to me as agent, voucher O. S. L. for \$387.70.

Q. And those are the two refunds you have been describing?

A. Yes, sir.

Mr. Robbins: We offer these two vouchers in evidence, your honor.

Received without objection, and marked "Plaintiff's Ex. 4," and "Plaintiff's Ex. 5."

Cross Examination.

Questions by Mr. Hart:

Q. Mr. Anderson, your first connection with these transactions, you say, was several years after the shipments?

A. Yes.

Q. You were asked by the Portland Cattle Loan Company to check over its freight bills, and see whether or not any errors had occurred?

A. Yes, sir.

Q. And you were doing that generally with shipments for the Portland Cattle Loan Company?

A. Yes, sir.

Q. And when you came to these shipments from Hereford, Texas, to Idaho and Montana points, you examined the expense bills and the tariffs to see whether or not the charges were correct, did you?

A. Yes, sir.

Q. You had had some experience yourself in tariff matters, had you not?

A. Yes, I had been employed as rate clerk for the C. B. & Q. Railroad for six years. Subsequent to that time I was twelve years as traffic manager for Swift & Company at South St. Joseph and Fort Worth, Texas, and eight and one-half years with the Union Meat Company as traffic manager at North Portland, and had made a specialty of live stock rates and tariffs.

Q. Altogether you have had about 26 years in traffic work?

A. Altogether, yes.

Q. And for most of that time you have been dealing with railroad tariffs applicable to live stock shipments?

A. Particularly so with reference, when I came to Portland, to adjust the live stock rate situation here. I had to go over the situation with all the lines and adjust the rates to North Portland as

compared to other centers, such as Puget Sound, and other interior points.

Q. That is, you had charge of the general rate adjustment following upon the establishment of stock yards and plant?

A. And a revision of the tariff with the railroad.

Q. I mean, consequent upon the establishment of the industries out there at North Portland?

A. Yes.

Q. So that, at the present time, you have charge of all traffic matters for the Union Meat Company?

A. Yes, sir.

Q. And did at the time of these shipments?

A. Yes, sir.

Q. Were you dealing daily with tariffs then?

A. Yes, sir.

Q. Now, in going over these freight and expense bills for the Cattle Loan Company, did you have occasion to examine the tariffs applicable to the shipments?

A. Of these particular shipments?

Q. Yes.

A. I did.

Mr. Robbins: Well, now, if the court please, we have no objection to counsel going into that, but we want it understood he is making this wit-

ness his own. We didn't ask him anything about the application of the tariffs on direct examination. We asked him about these payments.

Mr. Hart: Well, ultimately, I shall make Mr. Anderson my witness, no doubt; but thus far I am dealing strictly with matters which appear to be brought out on the direct examination; that is, these refunds. The direct examination went to the refunds, and I propose to find out all of the circumstances surrounding the making of the claim for refunds.

Court: Did you go into these rates for the refund?

A. I did, your honor.

Q. I show you Plaintiff's Exhibit 1, Mr. Anderson, which states that it is "Joint Live Stock Tariff No. 100-A," and ask you if you examined that tariff in connection with these proposed refund claims of the Cattle Loan Company?

A. I did. I had a copy of this particular tariff in my possession at the time.

Q. And then, as a result of your examination of that tariff, what did you conclude as to the rates which were applicable?

A. The rates according to this tariff, as being applicable from Hereford, Texas, to Pocatello—the rates according to the tariff, as I read them, were applicable from Hereford, Texas, to Idaho Falls at the rate of \$116.50 per car.

Q. That is, you concluded that the Amarillo rate was clearly applicable from Hereford?

A. Absolutely.

Q. Now, then, what criticism did you have about the rates which had been charged the Cattle Loan Company for that shipment?

Mr. Robbins: Well, now, we renew our objection. We did not go into the accuracy of these rates with this witness at all. We merely asked him on direct if he got these refunds and he said he did.

Court: Counsel is trying to get at how he reckons his refunds—how the witness estimated his refunds. Of course, he had to have the tariff rate before him.

Mr. Robbins: I have no objection to his going into that if he makes him his own witness and lets me cross-examine him.

Court: If he is going to examine him as an expert, he probably will.

Mr. Hart: No, your honor, I may do that later, but I am still getting at the basis of this refund, because I do not want any impression created that Mr. Anderson in making these claims criticised any part of the rate except the Idaho Falls-Pocatello proposition.

Court: Very well, the court will hear you. I will overrule the objection.

Q. The question was, what criticism you did find with reference to the rates exacted?

A. Well, if it pleases the court, I will read a communication that I addressed to the freight claim agent of the Oregon Short Line in connection with the first claim.

Q. Well, perhaps counsel would not permit that. You can just tell what you did. What did you find with reference to the tariff?

A. I found that there was an overcharge of \$20 per car in the rate between Idaho Falls and Pocatello. In other words, the railroad had assessed the \$116.50 per car rate to Idaho Falls and assessed the local back from Idaho Falls to Pocatello; while, as a matter of fact, the intermediate application of the tariff provided that the Hereford-Pocatello rate should not exceed the Hereford-Idaho Falls rate.

Q. I see. Idaho Falls is a little—is farther west?

A. To the north.

Q. Farther to the north than Pocatello?

A. It is on the main line of the Salt Lake-Butte line of the O. S. L.

Q. So that, under the intermediate application on the long and short haul clause, they could not charge more for Pocatello than they did for Idaho Falls?

A. No, not according to the application of this tariff, although their freight claim agent contended that they could. I personally addressed a communication to the general freight agent, who has charge of the issuing of all the tariffs, and after addressing him personally on the subject, he sustained our position.

Q. Oh, I see—the freight claim agent first insisted that the \$20 charge for Idaho Falls-Pocatello was proper?

A. Absolutely.

Q. And then the general freight agent personally overruled him?

A. Overruled him; because the general freight agent is the one who construes or reads the tariffs as they are supposed to be read.

Q. So that then the allowance of this refund was made to you?

A. Yes, sir.

Q. And by what department was it paid?

A. I didn't understand the question.

Q. Was it paid by the auditor of the Short Line?

A. By the freight claim agent. He then received instructions from Mr. Reeves to voucher the two claims.

Q. Mr. Reeves is the general freight agent?

A. Mr. Reeves is the general freight agent of the Oregon Short Line.

Q. So that since that time, since 1915, has there ever been any suggestion that that refund was not entirely proper?

A. Until the application was made to their auditor.

Q. Well, this present application, and this law suit which grew out of it, did not criticise the Idaho Falls-Pocatello position that you had taken, did it?

A. No, not a bit.

Q. This case and the claims on which it rests deal with the Hereford-Amarillo situation?

A. Entirely. This claim here, it is not considered it enters into it at all.

Q. In other words, every one is agreed that the tariffs permit the same rate to Pocatello as to Idaho Falls?

A. Yes.

Court: That is to say, you didn't look into that matter—you took that for granted as being the rate from Hereford to Pocatello?

A. No, I figured, your honor, that the rate from Hereford, Texas, according to the tariff to Pocatello and Idaho Falls is the same—\$116.50; but the Short Line had assessed \$116.50 to Idaho Falls and charged us the local back to Pocatello.

Court: Well, now, the only question that arose

on the refund, was whether or not they had a right to charge the rate back?

A. Yes, that was what entered into this claim.

Court: That amounted to \$20?

A. Yes, sir.

Court: That is what you looked into especially?

A. Well, I looked into both the revising of the bill and the overcharge that had been made at the same time.

Q. That is, you checked up the whole rate?

A. Yes.

Q. At both ends of the trip?

A. Yes.

Q. And you satisfied yourself that according to that tariff Hereford shipments took the same rate as Amarillo shipments?

A. Yes, being in the Amarillo group, and according to the application.

Redirect Examination.

Q. Now, as a matter of fact, Mr. Anderson, the whole controversy in this case, with you and the freight claim agent and everybody else, was whether or not the rate applied from Hereford to Idaho Falls, wasn't it?

A. No, as I say, Mr. Robbins, we were checking our expense bills to the ultimate destination of the live stock; and according to the tariff I found that

the \$116.50 rate applied from Hereford in the Amarillo group to Pocatello and to Idaho Falls therefore I discovered there was an overcharge of \$20 per car, and I addressed a letter to Mr. McNitt of the Short Line, calling his attention to the mistake that had been made in assessing the local back from Idaho Falls to Pocatello; and his reply was that there was no through rate published to Pocatello.

Q. From where?

A. From Hereford to Pocatello. We are saying from Hereford to Pocatello.

Mr. Hart: Or from Amarillo to Pocatello?

A. Or from Amarillo to Pocatello.

Mr. Hart: The point was whether Pocatello or Idaho Falls was the destination.

Q. So we went back at Mr. McNitt and referred him to the application of the tariff, and still he didn't concur with reference to the local rate of \$20. Then I addressed a communication to the general freight agent under personal cover—Mr. J. A. Reeves—and he came back and sustained our position that the through rate from Hereford, Texas, to either Pocatello or Idaho Falls was \$116.50.

Q. You just point out in the tariff where you get the through rate of \$116.50 from Hereford, will you, please?

A. By referring to page 26, section 1, we find under index 98 the town of Hereford at the Ama-

arillo basis charge. The Amarillo basis I think was described yesterday. To make it a little more clear now, you take such points as St. Louis common points and Missouri River common points embrace a lot of common points in a certain territory.

Mr. Hart: By common points what do you mean—points that take the same rate?

A. Points that take the same rate. We will say St. Louis common point rate from Quincy, rate from Davenport, Moline, East St. Louis, are all in that group, although they are a considerable distance apart, from the basing point they take the same rate. Consequently, according to this tariff Hereford is subject to the Amarillo rate. Then by referring to page 50 of section 2, item 2050, we find the rate in lots of 10 or more cars—both of these shipments consisted of lots of ten or more cars—\$116.50 per car.

Mr. Hart: From and to where?

A. From Hereford, in the Amarillo group, to Idaho Falls, Idaho.

Q. Now, that is the basis of your computation, is it?

A. That is the basis of the rate.

Q. And that is the reason you say the rate applies from Hereford to Idaho Falls?

A. Yes.

Q. Well, now, in reading a tariff, it is usual to

read the whole of the tariff, isn't it, and not just pick out one or two parts of it?

A. Well, you will find your application right there, as you open up to this index here.

Q. Well, now, what does that application say as to section 1? Doesn't it say here that "The differentials shown in Section No. 1 are to be added to or deducted from the Amarillo, El Paso or Deming rates as shown in Section No. 2 hereof, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69?"

A. That is with reference to where there is a differential. There is no differential to be added or to be deducted from that rate.

Q. Well, now, wait a moment. That means this statement here that you are reading on page 25 can only apply where the routing over here on page 56 and the application makes it so, doesn't it?

A. Where there is a differential.

Q. All right. What does the next one say, then? The next one says that, where there is no differential, "the Amarillo or El Paso-Deming rates as shown in Section No. 2 are to be applied as indicated," in section 2.

A. There is no foot-note or any clause in there that gives any reference to your application on the back of the tariff at all. So naturally—

Q. What does this mean here?

Mr. Hart: Let him finish.

A. Wait till I get through. General Freight Agent Reeves and all the rest of the Short Line officials have passed upon it the same way.

Q. I am asking you what you think about it now; not what Reeves thinks about it.

A. Well, I have already stated what I think about it.

Q. Well, Mr. Anderson, this note, then; section 1, Item 200, on page 24, in your opinion, now, does that mean anything at all?

A. It means where there is a differential to be added or deducted.

Court: What is meant by a differential?

A. Well, in parts of that tariff—let me have that tariff so I can explain it to the judge a little farther. Here, your honor, these added differentials are to be added to the rates to apply through—like from Texico, New Mexico, would add \$2.75 over the Amarillo rate. Here are some that are to be deducted from the El Paso and Deming rate. Now, we turn to this one here, where Hereford is, you see there is no differential at all. Now, here is one above there, from Angeles, Texas, we add \$25 to the Amarillo rate.

Q. Well, now, you say you find no differential in the Hereford rate. Now, what does this second

note here mean, then? It says, "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in Section No. 2 are to be applied as indicated." What do you say that means?

A. Well, that means just what it says, where section 2 names the rates.

Q. Well, I presumed it did, but I thought you could explain it probably; you are qualifying as a rate man.

Mr. Hart: Are you cross-examining him now as my witness?

Mr. Robbins: I am trying to cover some of the grounds that you covered—whatever you call that.

Mr. Hart: Well, then, when you are through I will just keep him on and ask him all the questions I have to ask him.

Mr. Robbins: Have you an objection in here?

Mr. Hart: I think I will make no objection. Go right ahead, Mr. Robbins.

Q. By referring to section 2, Mr. Anderson, doesn't that show that the rates shown in No. 2, in columns headed Amarillo and El Paso, are to be applied from stations shown in section No. 1 where application and routing is provided on page 56?

A. That refers to where the differential is added or deducted.

Q. Yes. Now, can you point out on page 56

where there is any application or routing from any points on the P. & N. T.? Can you show that?

A. Does it make any specific reference in the note here as to the application? Here is your application.

Q. Will you answer my question, please, and then I will take the stand if you like?

A. Well, I am taking the tariff as it reads.

Q. I am asking you if you can point out any application or routing on page 57 from P. & N. T. points to O. S. L. points?

A. Here is your application and the rates. You are referring to something back that refers to some foreign line matters.

Q. Will you answer my question, if you please, Mr. Anderson?

A. I think I fully answered your question.

Q. Can you point out on page 57 any application or routing from P. & N. T. points to O. S. L. points?

A. I have answered your question. This paragraph here, 2, governs.

Q. Paragraph 2, "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in section No. 2 are to be applied as indicated." Now, just show us what section 2 is indicated from?

A. Section 2 is right here, page 50.

Q. That shows the Idaho Falls rate of \$116.50?

A. Yes.

Q. Well, now, turning back to page 32, doesn't item 205 say that those rates can only be applied where the application and routing is provided on pages 56 to 69?

A. That has reference to the differential basis.

Mr. Robbins: That is all.

Examination by Mr. Hart.

Q. Mr. Anderson, it was 1915—January, 1915, when you discovered this overcharge by reason of the Pocatello-Idaho Falls local?

A. Yes, sir.

Q. And how long afterwards was it that you got the refund, just approximately?

A. Well, it was probably sixty days after that time.

Q. Sixty days afterwards. And you said in your examination a moment ago—

Mr. Robbins: Pardon me. This is the date here.

Mr. Hart: He said approximately. These vouchers show January 30, 1915, and February 17, 1915. Those would be the correct dates?

A. Yes, those would be the correct dates.

Q. Now, when Mr. Reeves answered you and told you that he had instructed Mr. McNitt, the freight claim agent, to allow you a refund, did he say that he agreed with your statement of the rates?

Mr. Robbins: Well, if the court please, I don't think that is very material what Mr. Reeves said about it. The question is, what is the tariff rate here?

Mr. Hart: It is very material to show that it is a fact that the general freight agent of the Oregon Short Line Company construed this tariff as the defendants and Mr. Anderson construed it, to wit, as applying the \$116.50 Amarillo rate from Hereford.

Court: That would be hearsay, wouldn't it, so far as Mr. McNitt is concerned?

Mr. Hart: Well, I am asking him what Mr. Reeves said to him, the general freight agent of the Oregon Short Line, the plaintiff company.

Court: Said to the witness?

Mr. Hart: Yes, said to the witness by letter or statement.

Mr. Robbins: I don't see how that would be material. You might get a dozen men that would say the rate was \$116, or \$110. I don't see that that would make any difference,—to permit this man to testify to purely hearsay.

Mr. Hart: It seems to me we have a right to show what practical construction the carriers have placed on this tariff. It appears already in evidence that for two and a half years the tariff was apparently construed as we claim it should be con-

strued, and that a refund was paid which recognized that construction; and that is the only point to this question.

Court: I think that is generally admitted, isn't it?

Mr. Robbins: We admit we made a mistake, yes. We admit we made a mistake in reading the tariff.

Mr. Hart: The point is they didn't make any mistake so far as Hereford and Amarillo were concerned. We want to show their construction of it.

Court: That is the very gist of the controversy, as to whether they did make a mistake or not.

Mr. Hart: Yes, and of course it is material to know how those men viewed the tariffs—the men who built the tariffs and who are responsible for their construction.

Court: I understand that it is admitted here that for those two years and a half they did construe the tariff as you say it ought to be construed now.

Mr. Hart: Yes.

Court: And after that they discovered their error. The question is whether or not they were in error, or whether or not they were construing it properly.

Mr. Hart: Yes. Well, I will withdraw that

question and put it in another form that perhaps will not be objectionable.

Q. Mr. Reeves did direct a refund, which refund of necessity recognized the application of the Amarillo rate from Hereford, did he not?

A. Of \$116.50 from Hereford to Pocatello.

Q. Yes. Now, then, when did the Cattle Loan Company first know that there was any claim that the Hereford rate—that it was necessary to collect the local rate from Hereford to Amarillo?

A. Well, to begin with, the Short Line instead of presenting expense bills, their treasurer drew a draft on the Portland Cattle Loan Company for \$7,693.25, involving the charges on all the shipments represented here in this case. They simply attached a memorandum. There was no expense bill submitted. About two years after, the Portland Cattle Loan Company obtained copies of these expense bills from the railroad; and it was then about three months after that that the claims involving these overcharges were presented.

Q. What I was getting at was, whether or not, during the time you were corresponding about the Idaho overcharge, there was any statement made in any of that correspondence about any claimed error about the Hereford-Amarillo rate?

A. None whatever.

Q. None whatever. Was it afterwards that a

claim was made that the Hereford-Amarillo rate had to be collected?

A. Yes.

Q. Now, there is a through route stated in this tariff from Amarillo to the Idaho points?

A. Yes, sir.

Q. To Oregon Short Line points. And there is in the tariff also a specific through rate of \$116.50 in ten car lots from Amarillo to Oregon Short Line points?

A. Yes.

Q. And Amarillo is on the Pecos and Northern Texas as well as on other lines, is it not?

A. It is on the Pecos & Northern Texas.

Q. And on other lines, too, Amarillo is?

A. Amarillo, yes. Amarillo is the junction point there between that line and Fort Worth and Denver City.

Q. And there is a specific statement in this tariff, section 1, to the effect that Hereford takes the same rate as Amarillo?

A. Yes, sir.

Q. And there is also a statement in the tariff that if Hereford—which means that if Hereford did not take the same rate as Amarillo, but if there was a differential, something added to or deducted from the Amarillo rate, that differential could only

be used where there was a routing shown at the back of the tariff?

A. Otherwise it would take the local rate.

Q. The point there being that if there was no routing shown on page 56 of the tariff, they would have to use the local from Hereford to Amarillo?

A. Yes, sir.

Q. If there was a routing shown, then they could use this differential of two, three, five, or ten dollars above or below the Amarillo rate?

A. Yes.

Q. That is true. And in the same explanation of section 1 of the tariff, there is a statement that where there is no differential, that is where the station, the point of origin, takes the same rate as Amarillo, the base point—in a case of that kind, the explanation of the tariff is flatly that the rates shown in section 2 are to be applied?

A. Yes, sir.

Q. And that rate in section 2 from the Amarillo group to Idaho Falls and Pocatello and such points, is \$116.50?

A. Yes, sir.

Q. And that was your basis for construing this tariff as applying the Amarillo rate for \$116.50 from Hereford?

A. And was confirmed by the general freight agent of the Short Line as the correct tariff rate.

Q. That is, it was confirmed when he recognized your overcharge claim?

A. Yes, sir.

Court: Who is the general freight agent?

A. J. A. Reeves.

Q. Do you remember, Mr. Anderson, when you presented your overcharge claim, giving him a specific reference to this live stock tariff?

A. I did, to those particular items.

Q. Which go to the rate all the way from Hereford up? If you have your letter to Mr. Reeves, I wish you would produce it or a copy of it.

A. If it please the court, I will read the first communication.

Mr. Hart: Well, if Mr. Robbins has no objection. That is not strictly the way to do it.

Mr. Robbins: What is the date of it?

Mr. Hart: It is first the copy of his letter to Mr. McNitt of November 11, 1914, and Mr. McNitt's answer of December 17, 1914, and then Mr. Anderson's personal letter to Mr. Reeves of December 23, 1914.

Mr. Robbins: I have no particular objection if the court wants to hear it, but I don't know what it has got to do with the case. We admit we made a mistake in assessing the rate, but if the court wants to hear it I will raise no objection.

Mr. Hart: The only point, your honor, is to

show that Mr. Anderson referred Mr. Reeves in this letter to the particular tariff we are talking about now, so that Mr. Reeves and his associate office had every opportunity for determining whether or not the \$116.50 was the correct rate from Hereford to Pocatello.

Court: After all, that would be hearsay, wouldn't it?

Mr. Hart: Well, it is an admission really. It is an admission against interest of the plaintiff in this case.

Mr. Robbins: If the court please, I cannot follow counsel on that. Now, if it were someone that had not been trying these cases, I could understand it; but here is a man that thoroughly understands we are bound to assess and collect the tariff rate, and it doesn't make a particle of difference what the agent said or what Reeves said or what anybody else said or thought. He knows better than that. It doesn't make that much difference what those people said or thought about it. The question is, what is the tariff rate here?

Mr. Hart: Mr. Robbins doesn't understand the position we take in this case, and that is: Here is a tariff which confessedly is ambiguous; that is, as the evidence now shows, it has been read two ways. We claim it should be read one way, and they have admitted reading it that way for a number of years. Now, then, what is the court going

to do? The court has got to determine what is the correct rate—has got to determine whether or not the tariff was ambiguous—whether or not it can be read in two ways; if not indeed in the one way that we see.

Court: The fact is here that Mr. Reeves agreed with the witness on the stand as to that tariff.

Mr. Hart: That is the ultimate effect of this testimony, yes. And we want it clearly understood that Mr. Reeves was referred particularly to this tariff so that there can be no mistake. There could have been no mistake about his examining the tariff and construing it that way.

Court: I will permit you to read that correspondence. However, I think it is more in the nature of hearsay than it is direct testimony. Reeves would be the best witness here.

Mr. Hart: That is true. Of course Reeves is an officer of the plaintiff company.

Q. Just read those three letters then, your first letter to Mr. McNitt, his reply, and your letter to Mr. Reeves.

A. This letter is dated November 11, 1914. "Mr. A. R. McNitt, Auditor, Oregon Short Line Railroad Co., Salt Lake City, Utah. Dear Sir: Referring to Hereford, Texas, to Pocatello, Idaho, waybills 543 to 559 inclusive, September 28 1912 covering shipment of 17 cars of cattle shipped for the account of

the Portland Cattle Loan Company of North Portland.

We note you have assessed freight charges on basis of rate of \$136.50 per car. Should not the charges have been assessed on basis of rate of \$116.50 as per item section 1, page 26, and item section 2, page 50, W. A. Poteet, Tariff 100-A, your No. 2271-B, permitting the application of the Hereford-Idaho Falls Rate?"

Mr. Hart: Let me interrupt you. Is that this Exhibit 1, that tariff you are referring to?

A. Yes, that is the same tariff.

(Continuing reading): "Your prompt reply will be appreciated. For your ready reference we are attaching copies of freight bills in question."

That was to their auditor who revises all the bills. His reply under date of December 17, 1914:

"With reference to your favor of November 11th, and returning herewith copies of freight bills sent with same.

We find the charges as assessed to be correct. We cannot use rate requested by you, on account of Item 5, of Tariff 2271-B ICC 265, effective Feb. 2d, 1912, which states that intermediate points must be located between two points shown in tariff or two destinations shown and there is no point shown south of Idaho Falls in section 2, of item covering rates and we have therefore used the best rate,

which is combination on Idaho Falls of \$116.50 per car plus \$20.00 Idaho Falls to Pocatello, this rating being in accordance with ICC Rulings."

In other words, he said there wasn't any rate in between the given points, like here is Idaho Falls, here is Pocatello—he contended there was not any point south. Then in my reply I wrote a personal letter to Mr. Reeves under date of December 23, 1914:

"Mr. J. A. Reeves, G. F. A., Oregon Short Line Railroad Company, Salt Lake City, Utah. Dear Sir: Your attention is directed to copies of letters exchanged with Mr. McNitt's office in regard to the proper rate to apply on shipments of cattle from Hereford, Texas, to Pocatello, Idaho, shipped Sept. 28, 1912, for the account of the Portland Cattle Loan Co. and the Portland Feeder Co.

It seems as though this rate was based on the through rate of \$116.50 per 36 ft. 6 in. car from Hereford to Idaho Falls, plus \$20.00 Idaho Falls to Pocatello based upon the application of Item 5 of Tariff 2271-B ICC 265.

Our contention is that at the time this shipment moved there were rates published in this tariff both to Rock Springs and Idaho Falls both points of which are on a direct line entitling us to the intermediate rate applicable to the more distant of the two points of which Pocatello is directly intermediate.

Awaiting your further reply, we are, yours respectfully."

Then Mr. Reeves referred this back to the auditor. This is dated January 16, 1915. He says:

"I have your personal favor of the 23rd ult., addressed to Mr. J. A. Reeves, our general freight agent, in regard to alleged overcharge on shipment 17 cars of cattle Hereford, Tex., to Pocatello, Idaho, Sept. 1912.

In my letter to you of Dec. 17th, I returned you the copies of freight bills sent with your letter of Nov. 11th. Will you kindly return these freight bills, and if you are not shown as consignor or consignee of these consignments, will you kindly have an assignment in your favor, or advise if we shall make draft payable to Portland Cattle Loan Co., in care of your firm, as we have authority from our general freight agent to protect the rate of \$116.50 per car as claimed. Yours truly, A. R. McNitt."

Q. Now, the \$116.50 was the Amarillo rate?

A. Through rate from Hereford to Pocatello which had been assessed to Idaho Falls with the local back.

Q. That \$116.50 rate is the rate stated from the Amarillo group to destination?

A. Yes.

Mr. Hart: That is all.

Examination by Mr. Robbins.

Q. Well, now, Mr. Anderson, this first letter you are talking about here from McNitt, that was on December 17th?

A. That is, his reply was December 17th.

Q. Do you know that Mr. McNitt wrote that letter himself?

A. It is signed by Mr. McNitt. I couldn't say as to whether that is his.

Q. You don't know whether he wrote it or not?

A. There is very few of those traffic officers that really deal with the rate situation themselves. They leave it to their subordinates.

Q. That is the point I am getting at. So far as you know, that letter was written by some clerk down there?

A. I wouldn't say as to that, because if I addressed a personal letter to you, calling your personal attention to some discrepancy, it is more apt to go to somebody that will give it proper attention than it is to hand it to an office boy, or rate clerk that don't understand his position.

Q. I don't say office boy. The point I am making is, you don't know that McNitt wrote that letter?

A. That is his signature or his office signature.

Q. What do signatures signify in the left-hand corner there, or the initials I should say?

A. JAS.

Q. That is not McNitt's initials, is it?

A. I wouldn't say as to that. It might be the stenographer's initials. Quite frequently the stenographers put their initials on the corner.

Q. Does J stand for McNitt? There are two—"JAS-J."

Mr. Hart: I don't think there is any point to that.

Mr. Robbins: There is this much point about it. I would like to get this straight. You put it in over my objection.

Mr. Hart: Mr. McNitt or somebody authorized to write the letter.

Mr. Robbins: You are putting this in as an admission of Mr. McNitt.

Mr. Hart: Admission of the Short Line Company.

A. If you go back to the reply where the letter was referred to Mr. Reeves personally, the same party you refer to replies to the second communication. Now, he is apparently one in authority or he would not say "We will pay the claim based on the proper tariff rate."

Q. I am asking you about this first letter now, Mr. Anderson—this first letter of November 11. Did you send that to McNitt under personal cover, you say?

A. No, I addressed it to Mr. A. R. McNitt as auditor—not under personal cover.

Q. This answer you received of the 17th, you don't know whether it was signed by McNitt personally or not?

A. I couldn't say as to that.

Q. Now, then, what was the date of that second letter? That is December 23rd?

A. My letter of December 23rd addressed to J. A. Reeves personally.

Q. That went to Reeves under personal cover?

A. Personal cover.

Q. And that answer to that was on—

A. January 16th.

Q. On January 16th?

A. Signed by the same party as referred to in the letter that you referred to of December 17th?

Q. So that you don't know whether Reeves or McNitt answered either one of those or not?

A. It is signed by A. R. McNitt. Of course I didn't see him sign the letter.

Q. No. Now, you had considerable other correspondence there too, didn't you, with them in connection with this matter?

A. At what time?

Q. Following this—right along following this?

A. We had, I think, some correspondence with

them probably, when the cases were referred back through Mr. Wood's office.

Q. Now, didn't you receive a letter under date of April 30, 1915, from McNitt?

A. Have you a copy of it there?

Q. Yes. Haven't you got them there?

Mr. Hart: They are probably in my files, Mr. Robbins.

Mr. Robbins: Well, I have got them here right handy. That is, I couldn't swear it is a copy. It is marked "Copy."

Q. Did you get that letter, do you recall, or could you testify?

A. Excuse me just a minute.

Q. Certainly.

Mr. Hart: Let me see it?

Court: You say this is 1913?

Mr. Robbins: This follows right after that other correspondence.

A. This is 1915.

Mr. Hart: This is April 30, 1915, and this is the letter which evidently first makes the claim that the Hereford-Amarillo situation was wrong. No doubt we got that.

Court: He changed his mind.

Mr. Hart: He changed his mind between February and April. That is the point.

Q. Are you willing to say that that is a copy of the letter, that has been made by somebody—I don't know who? Do you recognize it?

A. I think there was such a letter in the file.

Q. Well, just read that letter to the court, will you?

Mr. Hart: Here is the original, Mr. Anderson. It is not pertinent, but I have no objection.

Mr. Robbins: Go ahead, read it.

A. It says: "Salt Lake City, Utah, April 30, 1915. Claim 8274-13-9. 8274-31-9. Mr. Geo. F. Anderson, Agent Union Meat Co., No. Portland, Ore. Dear Sir: On Jan. 30, 1915, under our voucher No. 0-14140, we paid you \$387.70, which amount included \$47.70, interest, on what we supposed was legitimate overcharge on shipment 17 cars cattle from Hereford, Tex., to Pocatello, Ida., moving Sept. 28, 1912.

"On Feb. 17, 1915, per our voucher 0-14411, we paid you \$228.00 of which \$28.00 was interest on 10 cars cattle between same points on same date.

"The above result was secured by using a rate of \$116.50 per car from Hereford, Tex., to Pocatello, Ida., and I regret to advise that we now find same to be in error and that the correct rate should be on combination of locals over Amarillo being \$26.40 for a 36-ft. car Hereford to Amarillo, as per Panhandle & Santa Fe Tfr. 6016-F, ICC-6769; and

\$116.50 for a 36-ft. car, Amarillo to Pocatello, Ida., per O. S. L. Tariff 2271-B, ICC-265. I am therefore compelled to request of you refund of the amounts paid you in error, totaling \$615.70.

"Will appreciate your prompt attention in this. Yours truly, A. R. McNitt."

Mr. Robbins: We offer this original letter in evidence, your honor, and ask that it be marked.

Mr. Hart: It has been read into the record.

Mr. Robbins: We will withdraw it. I don't want to break up his record, your honor.

Q. Now, you wrote another letter there to McNitt, on the 3d of May, didn't you, in connection with this same matter?

Mr. Hart: There is no point to this added correspondence.

Mr. Robbins: There is this much point—we want to explain it. He was so anxious to explain this situation—let us have it all.

Mr. Hart: These parties corresponded for an ensuing year or more, until suit was brought, one contending that the Hereford-Amarillo rate had to be charged and the other denying it.

Court: I think that is the trouble of getting into this correspondence at all.

Mr. Hart: I merely brought in the admission, in the first place, of the Oregon Short Line.

Court: Now, then, the attorney on the other

side is showing that they changed their mind, which is conceded.

Mr. Hart: They have shown that, and I made no objection to their showing it. But why should we go on now?

Mr. Robbins: Why should we start? That is the question in my mind.

Mr. Hart: We had a distinct purpose in starting.

Mr. Robbins: You contend they started. Now, you started; I have a right to show what transpired.

Court: What is the question now?

Mr. Robbins: I asked him if he didn't also write a letter to McNitt under date of May 3, 1915. I will withdraw that. There is no sense in this in the first place. That is all.

Examination by Mr. Hart.

Q. So that, Mr. Anderson, April 30, 1915, was the time when it was first suggested that the Hereford-Amarillo local rate had to be collected?

A. Yes.

Q. That was that letter of Mr. McNitt's of April 30, 1915, relating to the two shipments moving August and September, 1912?

A. Yes.

Q. And it was April 30, 1915, when this first suggestion—the suggestion was first made that it

was necessary to collect local from Hereford to Amarillo?

A. Yes.

Examination by Mr. Robbins.

Q. I notice here in the correspondence that you stated to Mr. McNitt that you intended to refer this whole matter to the Interstate Commerce Commission for a ruling. Did you ever do that?

A. We couldn't—you couldn't refer it to the Interstate Commerce Commission for a ruling, because they wouldn't recognize—they don't recognize the shippers.

Q. Well, beg your pardon, Mr. Anderson. I understood that you told Mr. McNitt you intended to do that?

Mr. Hart: That wouldn't make any difference anyway.

A. That wouldn't make any difference.

Mr. Robbins: Let me find out.

A. The Interstate Commerce Commission would not recognize anything of that kind. If you will allow me to explain that; where a shipper is overcharged, within the limitations of two years you cannot take it up with the commission.

Q. You didn't take it up with the commission?

A. I say you couldn't take it up with the commission.

Q. You said in your letter here you intended to?

A. Well, I intended to—sometimes you say that just as—

Q. As a bluff?

A. As a bluff, yes.

Mr. Robbins: That is all.

Examination by Mr. Hart.

Q. The Interstate Commerce Act provides a two-year limitation from the time of shipment, I understand?

A. Yes.

Q. So that, although the carrier may come in several years later and try to collect the undercharge, the shipper cannot ask reparation after two years from the time of shipment?

A. After two years.

Excused.

Court: So that rule doesn't act both ways, 'then?

Mr. Hart: No, that is the unfair part of it, and I suppose some time it will be rectified.

Mr. Robbins: If the court please, counsel tells me that Mr. Lothrop is still in as much of a hurry as he was last night. I think I would like to accommodate him if he wants to get away.

Court: Very well.

J. H. Lothrop, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Hart:

You are anxious to get through by noon here, Mr. Lothrop, I understand?

A. I am. I would like to get through.

Q. You are traffic manager of the Portland Traffic & Transportation Bureau, Mr. Lothrop?

A. Secretary.

Q. Secretary. And in charge of rate and traffic matters for that association?

A. Yes, sir.

Q. That association comprises jobbers and manufacturers in Portland?

A. Jobbers and manufacturers, distributors generally.

Q. How long have you been engaged in rate work?

A. Nearly thirty years.

Q. Where abouts, briefly?

A. I commenced to work for the Union Pacific at Omaha thirty years ago and remained with that company about twenty years, most of the time in the traffic department. After that I went to Spokane, was general freight agent of the Spokane & Inland—was with them about two years. I have

forgotten the exact time. Was out of the service for something less than a year. Was then with the North Coast Railroad. And then came to Portland five and a half years ago; became secretary of the traffic—manager at that time of the transportation committee of the Chamber of Commerce, which was afterwards merged with the Chamber of Commerce, and then separated a year ago under the present association.

Q. So that after this period of railroad experience, traffic experience for the railroads, after that and for the past five and a half years you have been representing this traffic bureau, or rather the Traffic and Transportation Association and its antecedent bureau?

A. Yes, sir.

Q. And your work in that respect has had to do with the construction of tariffs?

A. Well, not the construction of the tariff.

Q. I mean construing them. I don't mean making them.

A. Construing them, yes.

Q. Have you participated in many rate cases and many discussions of rates?

A. Quite a number.

Q. Before the Interstate Commerce Commission?

A. Yes, sir.

Q. You are engaged usually with Mr. J. N. Teal in the handling of rate work, are you not?

A. Yes, sir.

Q. Mr. Lothrop, have you examined this tariff, Joint Live Stock Tariff No. 100-A, W. A. Poteet Agent, which is plaintiff's Exhibit 1 in this case, at my request, to determine the rates stated therein on live stock in ten carload lots from Hereford, Texas, to Pocatello, or Idaho and Montana points generally, on the Oregon Short Line?

A. Yes, sir.

Q. What do you find as the rate quoted by that tariff 100-A?

A. In my opinion, the correct rate on cattle in 10-car lots from Hereford to Pocatello is \$116.50 per car.

Q. Now, I call your attention first to the manner in which that tariff is constructed. There is first section 1, is there not?

A. Yes.

Q. Now, tell what is section 1 of the tariff? What does it aim to do?

A. Section 1 of the tariff names the basis of rates from various points in the Southwest, stating whether the rates shall be from certain points the same as basing rates, or whether they shall be arbitraries above or differentials below those basing rates.

Q. That is, there are certain base points stated, and Amarillo is one of those base points?

A. Amarillo is given as one of the base points, yes, sir.

Q. And then there is a list of stations which either take the Amarillo rate, or which take something a little over or something a little under?

A. Yes, sir.

Q. And when it takes a little over you call it an arbitrary, and when it takes something under it is a differential, or is the word "differential" applied to both?

A. I think they use "differential" in both cases here. Sometimes where the addition is found, it is usually called an arbitrary; while below, or a deduction, it is frequently called a differential.

Q. But this tariff refers to both as differentials, that is, above or below the base point rate?

A. Yes, sir.

Q. What do you find in section 1 as to the station of Hereford, where these shipments originated?

A. Hereford is indexed as No. 98 on page 26 and takes the Amarillo rate basis. There is no addition or no deduction shown; no arbitrary or differential.

Q. But that is the section of the tariff showing points of origin?

A. Yes, sir.

Q. And the basis of rates from the points of origin?

A. Yes, sir.

Q. And you find there that Hereford takes the Amarillo rate?

A. Yes, sir.

Q. Now, where do you find the Amarillo rate?

A. The Amarillo rate is shown in section 2 of the tariff.

Q. Referring you to page 50 of section 2.

A. On page 50 the rate of \$116.50 is shown as applying from Amarillo to Idaho Falls on the Oregon Short Line. Pocatello is not specifically mentioned but is intermediate to Idaho Falls, and the Pocatello rate cannot exceed the Idaho Falls rate. Therefore the Idaho Falls rate applies at Pocatello.

Q. And does this tariff also show the same, or a rate from the Amarillo group to Dillon?

A. Dillon \$125.00, yes, sir.

Q. And Dillon is on the way up to Butte?

A. Yes, sir, north of Pocatello and south of Butte.

Q. So to get the Butte rate they would take the Amarillo group rate to Dillon and add the local to Butte?

A. I should think so, yes.

Q. Now, section 2 of this tariff undertakes to do what?

A. Well, section 2 of the tariff actually names rates to various destinations from certain groups.

Q. From these different groups?

A. From the different groups, yes, sir.

Q. All right. Now, turn back to section 1 of the tariff, which, as you explained, lists the points of origin, and states the rates from those points of origin. Do you find anywhere there any reference to section 3 of the tariff, where the routing and application of certain rates is shown—do you find any reference in section 1 to section 3 which would limit any of these rates stated in sections 1 and 2?

A. Yes, there is limitation on some of them.

Q. Now, what is that limitation?

A. That limitation or restriction is placed against stations, originating stations that take a differential.

Q. Originating stations, did you say?

A. Originating stations taking differential rates.

Q. Taking differential rates?

A. Differential above or below the base rate.

Q. And you find the limitation on page what of the tariff?

A. It is on page 24.

Q. And that reads how?

A. That reads "The differentials shown in section No. 1 are to be added to or deducted from the Amarillo, El Paso, or Deming rates as shown in section No. 2 hereof, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69."

Court: Just a moment.

A. That is on page 24, your honor.

Court: Now, you refer to page 57?

A. "Provided on pages 56 to 69," yes, sir. And 57 would come in under that grouping.

Q. Well, now, I want to ask you, on page 57, Pecos & Northern Texas Railway, following that out to the O. S. L., there is a blank left there?

A. Yes, sir.

Court: There is no rate given. How do you construe that?

Q. That applies, your honor, according to the reading of the tariffs, where differentials are shown in section No. 1.

Q. That is, Mr. Lothrop if I understand you correctly,—suppose Hereford was shown in section 1 as taking a differential of \$2.50 over Amarillo, supposing, just for the purpose of illustration, that instead of showing Hereford to be in the Amarillo group and taking the same rate, Hereford was shown as \$2.50 above the Amarillo rate, as some stations are so shown in section 1—

A. Yes, sir.

Q. Now, there would be that differential, so called, of \$2.50?

A. Yes.

Q. Now, then, under this explanation, you go back to page 57, and finding no route number with the Oregon Short Line, it would mean that you could not use that \$2.50 over Amarillo but would have to charge the local—have to pay the local rate from Hereford to Amarillo?

A. Yes, sir.

Q. That is correct, is it? But that is the case where the tariff showed a differential, an added charge over or a deduction from the Amarillo rate?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. And where, on the other hand, the tariff shows the Hereford rate and the Amarillo rate to be the same, that is, where there is no differential, do you find then any reference to page 56 or 57 of the tariff, which might make that application of the Amarillo rate improper?

A. No, sir.

Q. What is the explanation which covers cases where the rate is the same, as in the case of Hereford and Amarillo?

A. That is provided for in the second paragraph

of page 24, which reads, "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in section No. 2 are to be applied as indicated." That is entirely separate and distinct from paragraph No. 1 shown on page 24. It positively fixes the rates from Hereford to be the same as the rate from Amarillo. If it had been intended to refer to pages 56 to 69, or to 57, as that chart is given on, they should have been included in the second paragraph, or the one where it reads to start with, "Where no differentials are shown." There should have been included in that paragraph the same reference to those pages in section 3 as are covered in the first paragraph of page 24. There is a positive statement there as to the Hereford rate being the same as the Amarillo without any restriction or any qualification.

Q. So that, according to those two explanations on page 24, originating points which take a slightly higher or lower rate than the Amarillo rate can only be given that slightly higher or lower rate where there is a route number shown on page 57 of the tariff?

A. Yes, sir.

Q. But on the contrary, where there is no differential, where the tariff shows the Hereford rate the same as the Amarillo rate, there is no differential, then the explanation on page 24 makes no reference to the chart, or to the routing at pages 56

to 69, and there is no such limitation as to that application as there is to the case where a differential appears?

A. Yes, sir.

Q. So that, in your judgment, as a rate expert, the meaning of that tariff taken as a whole, taking sections 1 and 2, with the explanations given in it, the meaning of that tariff is to quote a rate of \$116.50, the Amarillo rate, from Hereford?

A. Yes, sir.

Cross Examination.

Questions by Mr. Robbins:

Now, Mr. Lothrop, as I understand your testimony, you are testifying that Item 200 there, under section 1, only applies where there are no differentials? Is that correct?

A. No. Page 24 refers to both where there are differentials and where there are no differentials.

Q. The first part I am talking about now.

A. The first part?

Q. The first part of Item 200 there. Yes, the first paragraph there.

A. I understand.

Q. I understand you to testify that that only applies in cases where there are no differentials?

A. That is just what it says, sir.

Q. That is your testimony?

A. Yes, sir.

Q. And where there are no differentials named, then you construe the tariff as meaning that Hereford would take the Amarillo rate?

A. Absolutely so. There is no restriction whatever—no further reference. It says positively, "Where no differentials are shown, the Amarillo rates, as shown in section No. 2, are to be applied as indicated."

Q. Yes. Well, now, Abernathy takes a differential over Amarillo, doesn't it?

A. Yes, sir. Abernathy takes a differential of \$8.80.

Q. \$8.80 over Amarillo?

A. Yes, sir.

Q. Now, what would be the rate, then, according to your construction of the tariff, from Abernathy to Pocatello?

A. From Abernathy it would be a combination on Amarillo.

Q. It would be a combination on Amarillo?

A. Yes, sir.

Court: \$8.80 would be added to the \$116.50?

A. No, the local rate from Abernathy to Amarillo would be added to the \$116.50.

Q. That would be the local of \$39.60, then, added to the \$116.50?

A. I don't know what the local is; whatever the local rate is.

Q. Well, it is \$39.60, some of the witnesses testified. So that would make the through rate from Abernathy, then, \$156.10, or whatever the local added to the \$116.50 would make?

A. Yes, sir.

Q. Well, why do you make that rate on a combination over Amarillo?

A. Because there is a differential applied from Abernathy.

Q. What is your authority for that in the tariff?

A. There is a differential of \$8.80 is found against the index.

Q. I know. But the rule, Mr. Lothrop?

A. That is the first paragraph on page 24, section No. 1, which provides for differentials, where it says where the differentials are shown. Then you are further referred to the applications provided on pages 56 to 69. I think page 57 is the particular page that you would refer to.

Q. Yes, that is where the chart is.

A. Yes, sir.

Q. Well, now, there is no differential shown for Hereford, you say?

A. No, sir.

Q. Well, now, what does the second paragraph of Item 200 refer to? What does that mean?

A. It means just what it says, I presume.

Q. Well, we thought so, but we don't seem to be reaching the same conclusion. I want your theory as to what it means.

Mr. Hart: You mean you thought so for the first two years.

Mr. Robbins: Oh, no, no. We are not like these traffic men—we admit we make mistakes sometimes, Mr. Hart, try to get them right.

Q. What construction do you place on the second paragraph of Item 200 there?

A. Just what is previously stated; Mr. Robbins, that the Amarillo rate applies from Hereford.

Q. The Amarillo rate applies from Hereford?

A. Yes, sir; just as it says, just as plain as language can be written, it seems to me: "Where no differentials are shown, the Amarillo rates as shown in section No. 2 are to be applied as indicated."

Q. Well, now, how are they indicated in section 2?

A. Section 2 shows right there, \$116.50.

Q. No, the note I mean—the note to section 2?

A. You refer to Item 205?

Q. Yes, the part that is underlined in pencil there by somebody.

A. On page 32. Do you want me to read it?

Q. No, just the application part of it—the application and routing?

A. Well, it is pretty hard to separate it. “The rates shown in section No. 2, in columns headed ‘Amarillo’ and ‘El Paso-Deming,’ are to be applied from stations shown in section No. 1, as taking Amarillo or El Paso-Deming rate basis, or same are to be used as a basis for arriving at through rates from stations shown in section No. 1 as taking differentials over or under Amarillo or El Paso-Deming rates, where application and routing is provided on pages 56 to 69 inclusive from such point of origin to the destination station.” “See also Item 200, page 24.”

Q. That is referring us right back to where we started from?

A. Yes sir.

Q. Well, now then, Hereford is located on the P. & N. T., isn't it?

A. Yes sir.

Q. How do you construe any authority under the note to section 1 or section 2 to make a through rate on the P. & N. T., in view of the chart on page 57?

A. I think that the reference, the further reference under that paragraph, “See also Item 200, page 24,” you are referred right to that, and it shows there absolutely, plain as language can be written,

that where no differentials are shown the Amarillo rate as shown in section 2 is to be applied.

Q. Yes, in those cases where there is a through routing provided on page 57?

A. In other words, that absolutely nullifies Item 205 shown on page 32, just as section 3, page 57, absolutely prohibits the application of the Amarillo rate from Hereford under paragraph 1 of section 1.

Q. That note to section 1 and the note to section 2 in effect just refer back and forth, and both of them depend on page 57 for their routing and application, don't they?

A. No. After reading section 2 you are referred right back to section 1.

Q. That is what I am trying to say, yes.

A. In other words, I think section 2 would govern. Well, I don't know whether it would govern or not—it would be very conflicting if section 2 did not provide that reference to Item 200 on page 24. But after it does refer you back to that, and it states positively just what rates should be applied, it seems to me section No. 2 is without force so far as the Hereford rate is concerned, where no differential is shown.

Q. We are agreed, however, that on page 57 there is no through routing shown from P. & N. T. points to O. S. L. points, aren't we?

A. Yes.

Redirect Examination.

Q. There is a through routing shown from Amarillo to Idaho points, is there not, Mr. Lothrop?

A. Yes.

Q. Amarillo is a P. & N. T. point?

A. It is the northern terminus, I think. I am not sure about that.

Q. The northern terminus of the Pecos & Northern Texas. So that the chart is not strictly accurate in saying there is not any through routing from any P. & N. T. point to any O. S. L. point?

A. That is correct, sir.

Q. Whatever the note to section 2 says, you are referred back to the note to section 1, which makes the positive statement that in cases where there are no differentials over or under the basing point, then the flat basing point rate is to be applied?

A. Positive statement written just as plainly as it could be written in the English language.

Recross Examination.

Q. Well, now, as a traffic man, Mr. Lothrop, where the chart says there is no through rate from P. & N. T. points to O. S. L. points, do you still construe Amarillo as being a P. & N. T. point, simply because it is a junction—from a traffic standpoint, now?

A. Well, I don't know how you can get away

from it. If the P. & N. T. runs into Amarillo, it must certainly be a P. & N. T. point.

Q. Well, now, might not the Fort Worth & Denver City have their own switch track there in Amarillo?

A. Yes. It might be also a Fort Worth & Denver City point.

Q. That is what I thought I said, Fort Worth & Denver City. So, from a traffic standpoint, in view of the chart there, you construe Amarillo as being a P. & N. T. point?

A. I don't know about the chart part of it. Amarillo is a P. & N. T. point, if that is what you mean.

Mr. Robbins: That is all.

Redirect Examination.

Q. Is there any reason why a shipper, or anyone else, seeking to find out what the rate from Hereford to Idaho points might be—is there any reason, so far as you can find, why he might not rest content with what is shown in sections 1 and 2 of that tariff, without going to a section 3?

A. I see no reason why he should go to section 3 after reading that paragraph in section 1. That absolutely fixes the Amarillo rate from Hereford—the same rate from Hereford as from Amarillo. I don't know why he should go any farther. If there had been any intent on the part of the carriers to have you refer to section 3, it should have been so

stated in the second paragraph, page 24, of section No. 1, exactly the same as was stated in the first paragraph.

Q. That is, in the paragraph about differentials?

A. Yes.

Q. Which governs as in case of stations like Abernathy, where there is a differential shown?

A. Yes.

Q. To stations where there are no differentials?

A. You are referred to that particular part of section 3, and if the same was intended to apply where there was no differential shown from the points of origin, why, that should also have been included in the second paragraph. The two paragraphs are absolutely separate and distinct. You cannot read a part of the first paragraph into a part of the second—into the second paragraph.

Q. Whether or not any through route was shown by any part of the tariff between Pecos & Northern Texas points and Oregon Short Line points, there was a through route from Amarillo?

A. Yes, sir.

Q. And it was entirely possible for the carriers concerned to absorb, as they call it, the local from Hereford to Amarillo and make the Amarillo rate applicable from Hereford?

A. Yes, sir.

Recross Examination

Q. Well, now, your criticism of the tariff is purely your opinion as to how a tariff should be constructed?

A. No, I am not telling you how it should be constructed. I am undertaking to show my interpretation of the tariff as it reads.

Q. I thought you were criticising the construction of the tariff?

A. Oh, no.

Q. Oh, you have no criticism to offer of the construction of the tariff?

A. Well, I could offer some criticism, but I don't know.

Q. I am asking you what is the fact—are you or are you not?

A. No, I am not.

Q. You are not. I understood you were.

A. I am not criticising the tariff, no.

Examination by the Court.

Q. I do not yet understand how you make the estimate of the rate from Abernathy, where it has a differential. The estimate was made from Abernathy, Texas, 105 miles to Amarillo, and a charge was made of \$39.60. That is added to the Pocatello rate from Amarillo, \$116.50, which makes the rate from Abernathy to Pocatello \$156.10. I would

like to know why it is that you disregard the differential of \$8.80?

A. We disregard the differential, your honor, for the reason that in paragraph No. 1 of section No. 1 shown on page 24, where application and routing is provided on pages 56 to 69. Then when you turn to page 57 you find that those through routes do not apply where a differential is shown.

Q. Is that that blank space left there?

A. Yes. But that applies, according to the reading of the tariff, that part of the tariff is to be used only where differentials are shown.

Q. Then in making a rate you disregard the differential?

A. And add the local.

Q. You add the local?

A. Yes.

Mr. Hart. There is no dispute, your Honor, between counsel and myself as to that feature, and perhaps we can make it plain if it is not already plain.

Court: Well, then, according to this construction there would be a part of this matter that would be recoverable?

Mr. Hart: I think so. I think as to the Portland Feeder Company, that part of its shipment which moved from Abernathy must take the local rate from Abernathy to Amarillo.

Court: Then the mistake, according to your idea, was made in the first instance?

Mr. Hart: Evidently; because this tariff says that you can only use these differentials, such as that \$8.80 differential, where there is a routing shown on page 57.

Court: I see. It is pretty hard for me to understand. I will get it after a while.

Mr. Robbins: Do I understand you that we can eliminate the Feeder part of the case, then?

Mr. Hart: Only part of the Feeder case, because some of its shipments moved from Abernathy. So far as that Abernathy shipment is concerned apparently this tariff does not permit using the differential, but requires the local, because there is no routing shown. But the difference between that and all of the rest of the situation arises because all of the rest of the shipments originated at Hereford, which takes no differential, and the language of this second paragraph of section 1, which governs the situation when there is no differential, contains no such limitation; contains no reference to the chart and the routing, gives express authority for the use of that flat rate whereas in the case of Abernathy, where there is a differential, you can only use the differential, it says, where application and routing is provided on pages 56 to 69; but it is the failure to have that clause when the note speaks of stations like Hereford

which takes no differential, failure to have any reference to the application and routing on pages 56 to 69, and the explicit statement that the flat rate as shown in section 2 is to be applied, makes the difference.

Mr. Robbins: Mr. Hart, do I understand you are willing to concede we are entitled to recover on the Abernathy shipments, whatever they may be?

Mr. Hart: I think so, unless they are part of the ones which went beyond Butte, to a Chicago, Milwaukee & Puget Sound point. If they did that we have a radically different situation because then we have a situation originating at a Pecos & Northern point and going to a Chicago, Milwaukee & Puget Sound point, and there is a route number in the chart as between those carriers, so that I am not clear as to that.

Your Honor, I think there is no doubt but what a recovery is to be allowed so far as that part of the Feeder shipment which originated at Abernathy is concerned. Am I right in that, Mr. Lothrop?

A. I didn't catch that.

Q. That the Abernathy shipments, whatever shipments there were originating at Abernathy, under this tariff would have to be charged the Abernathy-Amarillo local rate?

A. Moving up over the Short Line.

Q. Yes.

A. Yes.

Mr. Hart: That is correct. I think I can make that admission in the case.

Mr. Robbins: That practically eliminates the second cause in the Feeder case.

Mr. Hart: Yes, I think that is correct.

Mr. Robbins: There were 32 cars there, 21 cars Abernathy to Pocatello, then 11 cars, making a total of 32 from Abernathy to Pocatello and American Falls.

Court: How much does that amount to in money?

Mr. Robbins: \$627.20.

Mr. Hart: I don't want to make that admission any broader than is necessary now, because I still want to reserve the right to check Mr. Robbins' proof, and if payment can be avoided I want to avoid it, because, of course, it is iniquitous so far as the individual shipper is concerned. But I do admit now that, so far as these Abernathy shipments are concerned, it was necessary under the tariff to charge the local rate from Abernathy to Amarillo.

Mr. Robbins: Well, then do I still understand, Mr. Hart, that you want me to go ahead with my proof on the second cause of action?

Mr. Hart: Well, I think I have made the admission about as broad as I can.

Court: Is that all?

Mr. Hart: That is all I have with Mr. Lothrop.

Mr. Robbins: Yes, that is all.

Excused.

R. A. Rankin, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Robbins:

Q. What is your business?

A. I am a clerk in the accounting department of the Oregon Short Line Railroad.

Q. In charge of what particular branch of the work?

A. Collection of undercharges.

Q. Who is your superior?

A. Mr. L. R. Wood, Auditor.

Q. L. R. Wood is the Auditor for the Oregon Short Line?

A. Yes sir.

Q. At Salt Lake?

A. Yes, sir.

Q. And you are the clerk in charge of undercharges under Mr. Wood?

A. Yes, sir.

Q. Now, how long have you been in charge of the undercharge bureau?

A. Nearly a year—11 months I believe.

Q. What were you doing previous to that time?

A. I was connected with the freight accounting department of the same company.

Q. And how many years railroad experience have you had in connection with undercharges and rates and things of that kind?

A. Twelve years.

Q. Now, as the head of the undercharge bureau, have you had any occasion to look into these cases which are in contest here today?

A. Yes.

Q. You are familiar in a way with those depositions that were taken that have not yet arrived?

A. Yes.

Q. I will ask you if the original contract and original waybills and some of those other original documents are attached to those depositions which are floating around Portland some place?

Mr. Hart: Well, I think we will wait and see about it. I object to that.

Mr. Robbins: He knows. He was there when they were taken.

Mr. Hart: Maybe he does, but he is not allowed to tell that.

Mr. Robbins: I want to account for those original documents to show why I am going to ask this witness some questions.

Court: I understand you are going to have those here?

Mr. Robbins: Yes, if counsel insists, I suppose.

Court: I will allow you to go ahead.

A. The original waybills and documents issued at the point of origin are attached to those depositions.

Q. Have you any duplicate originals here that we could use temporarily, of any of those documents?

A. I have the original contracts, or they are in the exhibits, covering that portion of the movement from Denver, Colorado to Pocatello, Idaho, I have in my possession here some original duplicates of contracts issued while the shipment was on the line of the Colorado & Southern. The balance of them are attached to those depositions.

Q. Have you any duplicate originals of any of the contracts entered into at any of the Texas points?

A. No, sir.

Q. They are all attached to that deposition?

A. Yes, sir.

Q. Well, have you any original waybills with you?

A. No, sir.

Q. When did you first have anything to do with the Portland Cattle Loan situation?

A. In the month of June of last year.

Q. June of last year. Just tell the court how it was turned over to you, or what you were doing at that time with it.

A. I was connected with the freight accounting department shortly prior to that time and was transferred from the freight accounting department to the miscellaneous accounts, where the undercharges are handled, with a view of taking charge of the undercharges and adjusting them in the account as was, or is found to be proper. This claim against the Portland Feeder Company and the Portland Cattle Loan Company—

Q. Pardon me just a moment. By “this claim,” what are you referring to? Are you referring to these exhibits 4 and 5?

A. Well, that is a portion of the claim.

Q. Make it a little more specific if you can.

A. The undercharges against the Portland Feeder Company and the Portland Cattle Loan Company were retained in the account, and came to me as a portion of my duties, to see that the matter was properly adjusted; that is, determine if the amount we were endeavoring to recover was the correct amount, and if it was not the correct

amount, to adjust the matter in our account to the correct basis and secure settlement of the undercharge. That is the manner in which I came in contact with the conditions entering into the transportation of these cattle, the collection of charges on the cattle from the Texas points to Pocatello, American Falls, Monida, and Butte, final destination, Piedmont on the last shipment.

Q. Just state briefly, without going into details, how you checked this matter up; just a brief outline of how you checked this matter up and what you did.

Mr. Hart: This was just last summer, was it?

Mr. Robbins: Well, it is when he took charge there.

Mr. Hart: I cannot understand how that could be material, your Honor.

Court: Well, I suppose it is really a construction of the tariff that we are getting at.

Mr. Robbins: This man was called upon to construe the tariff.

Mr. Hart: The claims were made, of course, long before that.

Court: You say they were?

Mr. Hart: Oh, yes, the claim was made on us in April, 1915, three months after the Idaho refund had been made.

Court: And this is last June?

A. Yes, sir.

Mr. Hart: This is last June, this witness is testifying to.

Mr. Robbins: You see we paid some money in error. We are trying to get it back.

Mr. Hart: I don't admit that. The payment to us was entirely proper. No one has ever disputed it. The dispute is in reference to the Texas end of the situation. The overcharge to us was entirely proper.

Court: The real condition is, as far as this witness is concerned, he is being offered as an expert—isn't that it?

Mr. Robbins: Partly, your Honor, and partly as to what actually transpired there in the accounts. He handled the accounts and made the payments. He is the man who actually handled it.

Court: Back in 1915?

Mr. Hart: No.

Q. Did you handle any of it in 1915?

A. Not as or in an endeavor to effect any adjustment by and between the Feeder Company or the Portland Cattle Loan Company and our company. At that time I was connected with the freight accounting department. I recollect distinctly the situation as it came up and how it came up. That is all.

Mr. Hart: But the first time you officially took hold of it was last summer?

A. Yes.

Mr. Hart: Well, now, if he wants to ask him if he examined the tariffs and what his opinion is, all right, I have no objection, because he has made some attempt to qualify.

Mr. Robbins: This man actually checked those payments and made them, your Honor. I want to offer him both as an expert and as to what he actually did there.

Court: Very well, go ahead. The court will hear you.

Q. In checking these rates, is it any part of your duty, or did you undertake to apply the tariff to these shipments to see what the correct charges were?

A. Yes.

Q. And what experience have you had in interpreting tariffs?

A. Well, I have been an agent of one or more companies, and as such I am required to base the charges on freight and passengers from here to there in the assessment and collection of charges. I have been employed in the revision department of the Oregon Short Line Company, in the accounting department—the revision bureau of the accounting department, where all waybills entering our

office are revised and determined that the charges are properly assessed.

Q. What is the fact as to whether or not it is part of your duties to check these different bills as they come through and see whether or not the tariff has been properly applied?

A. It is.

Mr. Hart: It is now part of your present duties?

A. Yes, sir.

Q. And before you took the position, there was another man doing the same thing?

A. Yes, sir.

Mr. Robbins: The point I am getting at is, his department is the one that checks these.

Q. Now, Mr. Rankin, I am now referring to the Portland Cattle Loan case. I will ask you if you checked up a shipment of 44 cars of cattle moving from Hereford to Pocatello and Butte on September 28, 1912, consigned by Greenameyer to the Portland Cattle Loan Company finally? That is they finally got it.

A. Yes, sir.

Q. I will ask you if you made a memorandum that is, took a memorandum off from your files showing the different cars and the movement and the application of the rates as you construe them?

A. Yes, sir.

Q. I will ask you if that is the statement his Honor has there, which was prepared under your jurisdiction?

A. Yes, sir.

Q. I will ask you, while we are about it, if you prepared a similar one for the Feeder Company?

A. Yes, sir.

Mr. Robbins: We offer these two statements in evidence, for the purpose of expediting this witness's testimony more than anything else.

Court: Have you any objection?

Mr. Hart: Not if it will assist your Honor. I don't suppose they are technically admissible.

Court: Do you want this plat to go with it?

Mr. Robbins: Yes, I guess that may as well go in.

Statements marked plaintiff's Exhibit 6 and plaintiff's Exhibit 7, and plat marked plaintiff's Exhibit 8.

Q. Now, Mr. Rankin, I will ask you if you are familiar with the southwestern territory down there, in around Amarillo?

A. Yes.

Q. And what railroad is it that extends from Hereford and Abernathy to Amarillo, if you know?

A. The Pecos & Northern Texas.

Q. And what road from Amarillo to Texline?

A. Fort Worth & Denver City.

Q. And from there to Denver?

A. The Colorado & Southern.

Q. And Denver to Granger?

A. Union Pacific.

Q. And Granger to American Falls, Pocatello, Idaho Falls, Monida, Dillon and Butte?

A. The Oregon Short Line.

Q. And Butte to Piedmont?

A. The Chicago, Milwaukee & Puget Sound.

Q. Now, referring to this statement which was prepared, how did you arrive at the computation of \$26.40 on that G. H. & S. A. car from Hereford to Amarillo?

A. How did we arrive at it?

Q. Yes: you show here that the correct charge is \$26.40.

A. Yes.

Q. How did you arrive at that?

A. The rate is that quoted in A. T. & S. F. Company's tariff 6016-E.

Q. Well, now, you mean this plaintiff's exhibit 1, is that the tariff you are talking about?

A. Plaintiff's exhibit 2.

Q. Plaintiff's exhibit 2, oh, yes. Well, go ahead and explain to the court now how you made that \$26.40.

A. Amarillo is a town located a little south and west from Hereford. I mean Hereford is a little town located south and west from Amarillo; in fact, 47 miles from there, as indicated in the various tariff sheets; and in accordance with provision of the tariff, which is on a mileage basis, we apply the rate applicable to a shipment moving 50 miles, by reason of a note in the tariff that says, "When exact distance is not shown, use next greater distance."

Q. Refer to the page in the tariff you are reading from.

A. This is page 2 of Supplement No. 5. of A. T. & S. F. tariff No. 6016-E, I. C. C. No. 5820; and the rate for the transportation of this shipment for 50 miles is 12 cents per hundredweight on cattle in carload quantities with a minimum weight of 22,000 pounds, as provided in this tariff on that page.

Q. Mr. Rankin, in referring to those, please refer to them as plaintiff's exhibits 1 and 2 instead of the I. C. C. numbers.

A. Yes. I believe that describes the rate from Hereford, Texas, to Amarillo, does it not?

Q. Did you state that was a mileage of 47 miles?

A. Yes.

Q. And under the note in the tariff, you apply the mileage of 50 miles?

A. Yes.

Q. That makes your local, then, from Hereford to Amarillo of \$26.40?

A. Yes.

Q. How did you arrive at the computation of the rate from Hereford to Pocatello that you show here?

A. Hereford to Pocatello?

Q. Yes, you say the correct rate here is \$142.90, Tell the court how you arrive at that.

Court: From Amarillo to Pocatello?

A. From Hereford to Pocatello.

Court: I think I understand that. That is by adding the local rate to the rate from Amarillo to Pocatello. That was described by Mr. French very clearly.

Q. That is correct, is it not? It is a combination of the local plus \$116.50?

A. Yes, sir.

Q. Now, then, the same computation, the same system would be used in the Hereford-Butte rate of \$171.20?

A. Yes, sir.

Mr. Hart: There is no dispute about those things.

Mr. Robbins: Yes. Well, I am just merely explaining how he arrives at this.

Mr. Hart: Mr. French explained it fully.

Mr. Robbins: Yes.

Q. Now, do you find a through rate from Hereford to Pocatello in that tariff?

A. Yes. No, not from Hereford to Pocatello—beg pardon; not from Hereford.

Q. What do you find with reference to Hereford?

A. Hereford, Texas, is a point located on the P. & N. T. Railway. I do not understand that any other railway passes through it or enters it excepting the P. & N. T. Railway. A rate is dependent to a greater or less extent upon the route, and in order to determine the rate it is necessary to determine the route. Therefore we will have to find out where the station is and over what roads it would pass to the points of destination. And by reference to this plaintiff's exhibit 1, tariff-No. 100-A, on page 57, we have routing and application. We determine that the Pecos & Northern Texas Railway Company and the Short Line do not jointly or together agree to quote a through rate from Hereford to Short Line points as indicated. In Note 1, Item 360, which is opposite to this page 57 where the route is quoted, it reads: "Where route number is not shown there are no through rates applicable from the originating line."—I would understand from that that there are no through rates applicable from Hereford, Texas, or any other P. & N. T. point to any point on the Oregon Short Line.

Mr. Hart: Except Amarillo?

A. Excepting none. Amarillo, while it is on the P. & N. T., and also on the F. W. & D. C., or the Fort Worth & Denver City, would, so far as a shipment originating at Amarillo is concerned, not be a P. & N. T. point. The P. & N. T. Company would not in any way enter into the shipment.

Court: Well, the P. & N. T. Company, is that an interstate line?

A. Your Honor, yes, a portion of the A. T. & S. F. Railway Company, or at least that is my understanding. It does not run interstate, but it receives freight handled interstate, and in that way is a part of the interstate.

Court: It is local?

A. It is within the state of Texas.

Q. Now, Mr. Rankin, something has been said here about the application of Item 200, I believe, not applying where there are no differentials. Will you explain that to the court, please?

A. Section No. 1, that is on page 24 of tariff 100-A, Item 200 is, "Governing use of differentials shown in section No. 1, pages 24 to 31 inclusive."

"The differentials shown in section No. 1 are to be added to or deducted from the Amarillo, El Paso or Deming rates as shown in section No. 2 hereof, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69."

I would not understand that paragraph, your Honor, to mean anything except that when routing instructions were provided on any of the pages from 56 to 69 there would be a through rate; when there was no route provided, there would be no through rate. There is no route provided, therefore there is no through rate from Hereford, Texas, or any other P. & N. T. point, to any O. S. L. point.

Q. What is your construction of the second paragraph of Item 200?

A. "Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in section No. 2 are to be applied as indicated."

Q. Well, now, how are they indicated?

A. In section No. 1 we have various differentials to be added to or deducted from these various basing points. They are for application in connection with shipments transported over routes indicated on pages 56 to 69, if I am not mistaken in the page number.

Recess until 2 p. m.

Q. Now, Mr. Rankin, in your statement here in the Portland Cattle Loan Company, you show the original collection as \$136.50. How was that rate constructed, if you know, to make that \$136.50?

A. Combination over Amarillo, \$20 to Amarillo and \$116.50 Amarillo to Pocatello, using Idaho Falls as the rate basis.

Court: What does that refer to?

Mr. Robbins: Portland Cattle Loan shipment Hereford to Pocatello.

Q. How many cars were in that shipment that the court is asking you about? It is indicated in the statement.

A. 27 cars.

Q. That is 27 from Hereford to Pocatello, and then the one from Hereford to Amarillo?

A. One.

Q. Making the 28?

A. 28 cars, yes.

Q. 27 and one.

Court: You say you make that total \$136.50?

A. Yes, amount collected. That is the amount collected at time of delivery, \$136.50 per car.

Q. Well, now, out of that \$136.50, did you make any refund?

A. Yes, there was a refund made on 27 of the cars, those 27 cars destined to Pocatello.

Q. Explain to the court how that came about?

A. The Portland Cattle Loan Company filed a claim for alleged overcharge with our freight claim department, and it was paid. That overcharge was \$20 per car. It was alleged that that \$20 represents or represented a back haul from Idaho Falls to Pocatello. But, as a matter of fact, we refunded \$20

collected and paid by our company to the P. & N. T. Company. Therefore we paid the P. & N. T. Company the \$20, and also the Portland Feeder Company \$20 on those 27 cars.

Court: \$20 apiece?

A. We paid the Portland Feeder Company in refund on account of the alleged overcharge, and we paid the P. & N. T. Company in interline settlement, which is the customary manner of disbursing of moneys collected for these lines. We hoped to secure credit by charging the various carriers interested, but upon applying to these carriers for authority to charge their companies with the amounts paid on account of the alleged overcharge, it was pointed out to us, the Short Line Company, that we were in error in refunding the amount, and that the correct charge for transportation of the cattle from Hereford to Amarillo was \$26.40, and that there was no through rate from Hereford, Texas, to Pocatello, Idaho; that it was made up of a combination over Amarillo.

Mr. Hart: You are speaking now, if I may interrupt, of something that was done prior to the time that you came into the transaction?

A. I am speaking simply from the records of our company.

Mr. Hart: That is what I am asking.

A. I have no personal knowledge that this ship-

ment moved other than what I have gained from the records.

Court: The \$20 overcharge was an erroneous charge in the first place?

A. No, it was not an erroneous charge. We collected \$20 for the transportation of the shipment to Amarillo.

Court: I mean in the first instance when the charge was made?

A. \$20?

Court: Yes.

A. No, it was insufficient at that time even.

Court: I know. But leaving out the construction, you are giving the rates now, the \$20 was an overcharge in any event?

A. I don't understand it as such.

Mr. Hart: That is the point that I have made. If I may ask the question, perhaps it will get at what Judge Wolverton means, the \$20 collected over the \$116.50. You collected \$136.50 for these cars?

A. Yes, sir.

Examination by Mr. Hart.

Q. That was intended at the time of the collection to include \$116.50 for the trip to Idaho Falls and \$20 for the back haul to Pocatello, was it not?

A. I don't understand it that way.

Q. Well, you don't know anything about it, as a matter of fact, do you?

A. Yes.

Q. What do you know, anything more than the records show? You don't mean to say to the court here, do you, Mr. Rankin, that that \$20 was intended at the time of the collection to cover the trip from Hereford to Amarillo?

A. I certainly do.

Q. You do?

A. Yes.

Q. Have you got anything to show that it was so intended?

Mr. Robbins: Well, now, if the court please, he has answered the question. I would like to finish my examination.

Court: What I was trying to get at, there was a charge of \$116.50 from Amarillo to Pocatello, and then they made a charge of \$20 for the back haul from Idaho Falls, and that was paid, and afterwards the shipper came back claiming that \$20 was an overcharge, so that the charge from Hereford to Amarillo was never included in that charge where they claimed the overcharge.

Mr. Hart: That is the point I made to the complaint in this case. I have always said that if we owed anything, it was the balance over and

above what had been finally paid, taking the overcharge into consideration—taking the refund into consideration. The refund, as we claim, was intended to cover this overcharge from Idaho Falls to Pocatello. Then they come back and say that the transportation from Hereford to Amarillo should be collected, which is \$26.40, and they ask us to pay back to them the \$20 they refunded us and also \$6.40. Now, the amounts are not the same. The overcharge is unquestioned, as I understand it, and the point involved in the case is whether or not the Hereford-Amarillo local of \$26.40 is collectible.

Court: Taking their claim, the charge from Hereford to Amarillo was \$26.40?

Mr. Hart: Yes, that is the local rate.

Court: And the rate from Amarillo to Pocatello is \$116.50?

Mr. Hart: Yes.

Court: Now, then, that is what they are claiming now as being the correct charge?

Mr. Hart: Yes, that is their present construction of the tariff.

Court: Now what they collected before, in the first instance, was \$116.50 plus \$20 for the back haul?

Mr. Hart: Yes.

Court: So that is \$136.50 that they collected?

Mr. Hart: Yes.

Court: But they said they were wrong in charging the \$20 back haul, and therefore they paid that back?

Mr. Hart: Yes.

Court: So that now they claim, under this contention, the two items of \$26.40 and \$116.50, that makes \$142.90.

Mr. Hart: That is their present claim of the rates, yes.

Court: Yes. The \$26.40 would be the amount really that they claim now on each car?

Mr. Hart: I so understand it, yes. And I thought that situation had been established by the correspondence that is, by Mr. Reeves and Mr. McNitt's letters, that they recognized the impropriety of exacting the \$20 for the Idaho Falls-Pocatello back haul; but this witness, as I understand, is testifying that that \$20 was never collected for that purpose at all, but intended to cover or apply on the \$26.40 from Hereford to Amarillo.

Court: It is a matter of construction. I would like to hear the witnesses, however, on the matter.

Examination by Mr. Robbins Resumed.

Q. Mr. Rankin, what does the \$20 cover?

A. The \$20 covers or was intended to cover, that portion of the transportation furnished from Hereford, Texas, to Amarillo, Texas.

Mr. Hart: I move to strike that out, because the witness obviously could not have any knowledge of the intention.

Court: It is very obvious to my mind that the witness is laboring under a mistake. Of course, the shipment was made from Hereford to Amarillo, and then to Pocatello, and then on to Idaho Falls. The matter of charge, first charge, was made on the two items, from Amarillo to Pocatello, and then \$20 for back haul. Isn't that right?

Mr. Robbins: Partly so, your Honor.

Q. Now, Mr. Rankin, have you looked into this matter, examined the records back from the inception of this shipment, to see what has been done in regard to these refunds?

A. Yes.

Q. Now is there any explanation you want to make in connection with this \$20 refund covering the amount from Hereford to Amarillo?

A. Yes.

Mr. Hart: I don't think he should make explanations of his idea. We introduced in evidence letters from the Short Line people showing how the refund came to be made, and showing it was this back haul of \$20. It is not right to permit now this witness to say what his idea is gained from perusal of correspondence.

Court: They put him on as an expert.

Mr. Hart: If he has any correspondence or any record which negatives that proof that is shown in the letters of Mr. McNitt and Mr. Reeves, all right; but as an expert I don't think it would be permissible for him to say what his idea is of the correspondence and records.

Court: That would be a matter for the court to interpret. I am inclined to hear this testimony because I want all the light I can get on it. You may explain.

A. My understanding, and the reason for my statement that the amount of \$20 is for payment of that portion of the transportation from Hereford, Texas, to Amarillo, is based on the fact that we paid that amount to the initial carrier for that service, in interline settlement with that carrier.

Q. That you paid to the Pecos & Northern Texas the sum of \$20 per car?

A. Yes, sir.

Q. To cover the haul from Hereford to Amarillo?

A. Yes.

Mr. Hart: When?

A. It will be necessary to refer to the record.

Q. Have you got them there with you?

A. They are in Mr. Wood's deposition.

Q. Well refer to it.

A. The record doesn't seem to be here.

Q. There is one of them, the copy, I guess will do.

A. Well, I wish the original record.

Q. Have you found it?

A. Yes, I have it.

Q. Go ahead. Answer the question.

A. November and December, 1912.

Q. And how much was paid to the Pecos & Northern at that time?

A. \$880.

Q. That is, \$880 paid to the Pecos & Northern Texas Railway Company.

A. Pecos & Northern Texas Railway Company.

Court: I suppose the Pecos & Northern Texas collects for the entire freight to its point of destination?

Mr. Hart: No, it was collected at destination, if your Honor please, at Pocatello.

Court: And then distribution made between the different roads according to their agreement between them as to what proportion each should receive?

Mr. Hart: Yes.

Q. Now, you made a refund there of \$20 a car, covering—or rather, that refund of \$387.70 which you made on January 30, 1915, what did that cover?

A. That covered a supposed overcharge for back

haul from Idaho Falls to Pocatello which did not exist.

Q. Go ahead and explain that a little fuller.

A. As brought out in the testimony we had collected \$136.50 per car for the transportation of those cars destined to Pocatello. That amount represents only the \$20 per car for transportation from Hereford, Texas, to Amarillo, and \$116.50 for transportation from Amarillo to Pocatello. In the filing of the claim and investigation of it, through some error or oversight, it was understood that this \$20 was collected as a back haul from Idaho Falls to Pocatello, and was consequently refunded as an overcharge.

Q. Well, now, \$340 of that was the actual refund, wasn't it and \$47.70 covered interest?

A. Yes, sir.

Q. So that in reality there was \$340 refund made there on January 30, 1915. Now, what did that other refund of \$228, \$200 and \$28 interest, which was made on February 17, 1915, what did that cover?

A. The first refund was on 17 cars, the latter refund was on ten cars and was made up and explained in the same way.

Q. And those shipments were moving from Hereford to Pocatello?

A. Yes.

Q. Now, what were the total charges, then, paid

on account by the Portland Cattle Loan Company?
Do you have a memorandum of those things?

A. Yes.

Mr. Hart: Hasn't he testified to that, Mr. Robbins?

Mr. Robbins: It is not very clear.

Mr. Hart: There is no dispute about it, and it has been testified to several times.

Mr. Robbins: I think he ought to explain it here for his Honor. It is not quite clear.

Q. In order to expedite the matter, refer to that memorandum you have there, that you have been using. Will that expedite the matter in any way?

A. Possibly. These columns are not footed.

Q. Have you got a memorandum there that you can refer to quickly, without consuming too much time?

A. Yes.

Q. What was the total amount collected, then, from the Cattle Loan Company?

A. In payment of freight charges, \$6342.30.

Q. And what is the total of those refunds, then?

A. \$615.70.

Q. Well, then, deducting those refunds from the amount paid would leave a balance due there, or a balance actually paid, of \$5726.60?

A. I haven't that calculation, but I presume it would be right.

Q. It would be the difference between \$615.70 and \$6342.30?

A. Yes, sir.

Q. Now, then, on your computation, what were the total charges due?

A. Total charges due?

Mr. Hart: It is all stated on this memorandum of yours, isn't it?

Mr. Robbins: No, that is not footed up.

A. They are not footed. They are per car here, but not footed.

Mr. Hart: It is a mere matter of computation.

A. That is all. \$6623.90.

Q. Then the difference between \$5726.60 and \$6623.90 is the amount that we are claiming here on this Loan case?

A. Yes.

Q. That is \$897.30?

A. Yes.

Q. But in that calculation there is included \$75.70, which was paid in those refunds?

A. Yes.

Q. Which practically does not cover transportation charge? That is a matter of interest?

A. Yes.

Q. Now, then, on the Butte shipment, Hereford

to Butte there were 36 cars in that shipment, were there?

A. There were 16 cars.

Q. No, no. 16, yes, 16 cars from Hereford to Butte. They are the last 16 cars shown on the Cattle Loan statement there. Now, there was no refund made on those cars, was there?

A. No, sir.

Q. And the original collection there, as shown here, is \$164.80?

A. Yes, sir.

Q. The calculation was made just the same as you have already explained, with the exception of from Pocatello to Butte?

A. Yes.

Q. Just tell the court how you made the calculation from Pocatello to Butte—what you based it on.

A. The rate from Hereford to Butte is made similarly to the rate from Hereford to Pocatello, except that a through rate from Amarillo, Texas, to Dillon is used instead of the through rate from Amarillo to Pocatello. And in addition to the rate from point of origin, Hereford to Dillon, the local from Dillon to Butte is added to secure the rate applicable from point of origin to Butte.

Q. Now, Mr. Rankin, you have checked these car numbers and initials against your records there that you have with you, have you?

A. Yes, sir.

Q. You have also checked the routing?

A. Yes, sir.

Q. What routing do you say this took? What was the routing?

A. Shipment from Hereford moved via the P. & N. T. to Amarillo, via the Fort Worth & Denver City to Texline, via the C. & S. Texline to Denver, via the Union Pacific Denver to Granger, and via the Oregon Short Line Granger to destination—Pocatello and Butte.

Q. Now referring to the first cause of action in the Feeder case, there are 36 cars there, moved from Hereford to Monida, your statement shows?

A. Yes.

Q. Now, the calculations would be just the same up to Pocatello, would they, as you have already described from Hereford to Pocatello?

A. Yes, the rate is made in the same way as that rate applicable to Pocatello.

Q. Well, how about the rate from Pocatello to Monida?

A. There is a rate quoted through from Amarillo to Monida. So you take the through rate from Amarillo to Monida plus the local from Amarillo to Hereford.

A. Yes, sir.

Q. Now, you figured that out on here, there is

no use stopping to calculate it, I take it, and your original collection on that movement was \$138.50?

A. \$138.50 per car.

Q. And how is that made up, that \$138.50?

A. The rate as primarily collected simply in the same way as described in connection with those shipments destined to Pocatello—\$20 for transportation of that portion of the movement from Hereford, Texas, to Amarillo, and \$118.50 from Amarillo to Monida.

Q. Then you say here in your statement the correct charge is \$144.90. That is, there was an undercharge of \$6.40?

A. Yes.

Q. How did you arrive at that \$6.40?

A. \$6.40 undercharge is the difference between the \$20, as originally allowed the Pecos & Northern Texas for their proportion of the haul, and the amount as stipulated in this local tariff.

Mr. Robbins: Now, I am not quite clear whether it is necessary to refer to this second cause or not. I understand you practically admitted our allegations on that, Mr. Hart?

Court: They admit that providing their theory of construction is correct. If it proves to be incorrect then that would alter it.

Mr. Robbins: It would not be necessary for me to offer proof on that second cause, then?

Court: I understand that is your position?

Mr. Hart: Yes, your Honor.

Q. Now, what do you say about the routing of this shipment from Hereford to Monida? Would the routing be the same as you have already described?

A. Identically.

Q. Have you checked these car numbers on the exhibit?

A. Yes.

Q. Know them to be correct. Now, on this Monida shipment, what was the payment on account? That is, how much was collected there, the total collection?

A. In payment of freight charges \$4986.

Q. And what was the correct charge as totaled?

A. \$5216.40.

Q. So the difference between \$5216.40, what we claim is the correct charge and \$4986, the amount that was paid on account, would be \$230.40?

A. Yes, sir.

Q. That is what we are asking on the first cause of action?

A. Yes, sir.

Q. And on the second cause of action, what was the payment on account there?

A. For the 21 cars destined Pocatello \$2866.50; on the 11 cars destined American Falls \$1655.50.

Q. That makes a total of \$4522 paid on account, then?

A. Yes.

Q. And the difference, then, between \$5149.20, which we claim is the correct charges, and \$4522, the amount paid on account, or \$627.20, is the amount we are claiming there on the second cause of action?

A. Yes.

Q. Making a total due, on both the first and second causes, of \$857.60, or whatever it figures out there?

A. Yes.

Q. Now, I notice you have a heading here "Freight Bill," "Waybill Reference." Just tell the court what you mean by that heading.

A. In describing the headings, the first "Car Initial & No." is descriptive of the initial and number. The next describes the point of origin of the shipment. The next "Waybill Reference" describes the issuing station, that is, the station issuing the waybill, the station from and to, and the date. The waybill is a document accompanying the shipment from point of origin to destination, passing with the shipment through the different junctions and over the different roads. The next

“Freight Bill” is a document used in giving a receipt to the consignee for any amount paid, and taking his receipt for freight delivered. It is made in duplicate.

Q. Now, is there any further explanation you desire to make to the court at this time?

A. No.

Cross Examination.

Questions by Mr. Hart:

Q. Mr. Rankin, you said you are now a clerk in employ of the auditor’s office of the Short Line?

A. Yes, sir.

Q. In charge of the revision of accounts?

A. No; in charge of collection of underpaid accounts.

Q. And you took that position about a year ago?

A. Yes, sir.

Q. And when you took the position you inherited with it all the old undercharge claims?

A. Yes, sir.

Q. And you have been active in the prosecution of this matter since that time?

A. Yes.

Q. You are the man who furnished the information to counsel for the commencement of the proceedings?

A. Yes.

Q. Before going into that work in the auditor's office, you were in the freight accounting department?

A. Yes, sir.

Q. And what particular work were you doing there?

A. I had charge indirectly of station accounts.

Q. What do you mean by indirectly?

A. Well, there was a man appointed as head of a bureau. I was his assistant. In his absence I had charge.

Q. Checking station accounts?

A. Checking station accounts.

Q. And how long were you at that work?

A. Four years.

Q. That is in the receipts division?

A. No. The receipts divisions? I don't understand. There is no such title as that.

Q. You do not have an auditor of freight receipts?

A. No, sir.

Q. And prior to doing that work, what were you doing?

A. Telegraphing on the D. & R. G. and acting as cashier.

Q. So that your experience with rates and with tariffs includes such work as you had as tele-

grapher and station clerk, or station agent, and then in the office checking station receipts, and then looking after the collection of undercharges?

A. Yes, sir.

Q. Now, Mr. Rankin, you testified that this \$20, which was collected in the first instance on all of these shipments, in addition to the \$116.50 rate from Amarillo, you concluded had been collected to cover the transportation up to Amarillo?

A. Yes.

Q. And you came to that conclusion because you found that your company paid to the Pecos & Northern Texas \$20 a car?

A. Yes.

Q. Have you any idea why they made it \$20. The local rate was \$26.40.

A. Yes.

Q. And they could not have been endeavoring to pay the local rate, could they?

A. Yes.

Q. Well, now, I notice on the Abernathy shipments that originated at Abernathy.

A. Yes.

Q. Where the local rate is some \$39.50 to Amarillo I notice there was some \$20 collected there also. Do you think that was intended to cover the local?

A. Yes.

Q. You think somebody made a mistake in calculation?

A. Yes.

Q. And that it was \$20 even that was collected for that purpose?

A. Yes.

Q. Although there is not any tariff authority anywhere for such a charge?

A. There is tariff authority, but it is not applicable in the case.

Q. Well, now, don't you think, as a matter of fact, Mr. Rankin, that the \$20 was paid to the Pecos & Northern under the supposition that that was to be the allowance to that company for its share of the transportation regardless of what the through rate charged the shipper was?

A. No.

Q. You think not?

A. I know not.

Q. Oh, you know? Were you there?

A. No.

Q. Well, when you say you know, you mean you have formed a conclusion to that effect? That is true, isn't it, bearing in mind that your acquaintance with this matter began a year ago?

A. Yes.

Q. You are hardly in a position to say you know anything about it absolutely?

A. Well, only from our records, which are, no doubt, correct.

Q. Yes, and you have told us about those?

A. Yes.

Q. Now, you seem so positive about this transaction, Mr. Rankin, you tell us that you prepared the figures for your counsel to begin this suit, I ask you if it is not true that when this suit against the Portland Cattle Loan Company, was begun, the amount demanded of the Cattle Loan Company, instead of being \$897.50 was \$1437.30?

A. Such might be the case.

Q. Yes; and when you furnished the figures to your counsel, to Mr. Robbins, to commence this suit, you told him that the Cattle Loan Company owed you \$821.60, representing an undercharge at the Texas end, and \$615.70 which you had improperly refunded them for the Idaho end, and you asked him to sue the Portland Cattle Loan Company for \$1437.30? That is a fact, is it not?

Mr. Robbins: Now, Mr. Hart, I didn't prepare the pleadings. They were prepared at Salt Lake.

Mr. Hart: Well, wherever they were prepared. I want to get at this witness's idea.

Q. That is the fact—that is the information?

A. It is my recollection that it was primarily

filed for some other amount. I don't know what the amount was now.

Q. It was covering two amounts, and it aggregated about \$1400, did it not?

A. It was in that neighborhood.

Q. Now, then, when you first prepared this statement of accounts, this statement of alleged undercharges on the Cattle Loan Company shipment, it was not quite in the form in which you have offered it in evidence was it?

A. I did not prepare that statement.

Mr. Hart: Please mark this statement.

Marked "Defendant's Exhibit A."

Q. I show you Defendant's Exhibit A and ask you if it is a copy of the undercharge statement against the Cattle Loan Company as first prepared?

A. It has that appearance.

Q. Yes. Now, then, it is a fact, isn't it, that this statement, Defendant's Exhibit A, which is made up in exactly the same form as the exhibit you have offered a moment ago, this statement shows that the total undercharge claimed from the Cattle Loan Company was \$1127.70? That is a fact, isn't it?

A. Yes.

Q. So that we have first this statement, made up in your office or the office of your company,

showing \$1127.70 as the claim?

A. Yes.

Q. And then we have the figures given to the attorneys for the preparation of the suit, showing \$1400 claimed; and now we have your statement offered in evidence showing \$897.60 as the under-charge claim. Someone evidently has been making quite a number of mistakes, hasn't he?

A. It looks that way.

Q. It looks that way indeed. But you are prepared to say that you know what this situation is?

A. Yes.

Q. Take these Abernathy shipments: The differential provided in this tariff, the differential over Amarillo provided in the tariff is some \$9, is it not?

A. \$8.

Q. \$8. The local rate, if the differential could not be applied because there was no through routing, the local rate would be \$39.60, wouldn't it?

A. That is as I recollect it.

Q. Now, your company paid to the Pecos & Northern Texas \$20 a car—neither one of those amounts. You still think, though, that that payment was made on the assumption that that covered a local rate from Abernathy to Amarillo, do you?

A. Yes.

Q. And that is 110 miles or thereabouts?

A. 105 miles.

Q. 105 miles. And exactly the same amount, that is \$20 a car, was collected on the Hereford shipments, and you think that that was intended also to cover the local rate from Hereford to Amarillo?

A. Yes.

Q. Although Hereford is 47 miles from Amarillo?

A. Yes.

Q. Well, somebody had another strange notion of the situation there, I suppose. Now, I ask you these questions, not to annoy you, but to suggest to you in all fairness that the strong probability is—and we are dealing with probabilities because we haven't the facts—the strong probability is that this flat allowance of \$20 was paid to the Pecos & Northern Texas Company under the supposition that that was the division by agreement between the companies?

A. No, sir.

Q. No? All right. Now, you said that the tariff, this tariff, Plaintiff's Exhibit 1, shows no through rate between Hereford and Idaho points on the Short Line? That is your statement?

A. Please state that again?

Q. I say, you say this Exhibit No. 1 shows no

through rate from Hereford to Idaho points on the Short Line?

A. No.

Q. And you say that that is so because on the chart, on page 57, it appears that the Short Line and the Pecos & Northern Texas did not get together on an agreement for a through rate between their two lines? That is the inference you draw from the absence of that writing? That is true, is it?

A. Yes.

Q. Now, then, even though there was no agreement between those two companies, I suppose there would be nothing to interfere with the lines between Amarillo and Pocatello agreeing between themselves that they would apply the Amarillo rate on shipments from Hereford, and do what is known as "absorb" an allowance to the Pecos & Northern Texas so that the shipper might have the benefit of the Amarillo rate, and still the Pecos & Northern Company be paid something by these carriers between Amarillo and Idaho points? There would not be any objection to such an arrangement even though the Pecos & Northern and the Short Line have not gotten together on an agreement for a through rate?

A. If that was incorporated in the tariff, it would be in effect. Otherwise, it would not be.

Q. Yes, all right. If the tariff had a plain statement, so plain that even you and the railroad rate men would recognize it, had that plain statement that shipments originating at Hereford and destined to Short Line points would take the Amarillo rate—had that statement clear beyond shadow of a question—then, if there was no through route specified, it would be apparent that the lines north of Amarillo would have to assume or absorb that, whatever the Pecos & Northern charged them for the local transportation to Amarillo, and the shipper would be entitled to the Amarillo rate?

A. The other carriers would shrink their revenue, or they would not be permitted to receive as much revenue in a case of that kind as in application of the rate.

Q. They would have to take care of this Pecos & Northern transportation charge, whatever it was?

A. Yes.

Q. So that, if the tariff did read that way, even though they did not have a through arrangement, it would still be possible to give the shipper the benefit of the Amarillo rate?

A. Yes.

Redirect Examination.

Q. Mr. Rankin, counsel has asked you about this Portland Cattle Loan Company statement, Defend-

ant's Exhibit A, which totals up \$1127.70. I will ask you to examine that and state whether or not it is the fact that all these claims are contained in that statement. For instance, those 36 cars from Hereford to Monida in the Portland Feeder case are in that statement, aren't they?

A. Yes.

Q. And the 21 cars from Abernathy to Pocastello, the 11 cars from Abernathy to American Falls, are they in there too?

A. No.

Q. Well, the Monida shipment was made by the Feeder Company, wasn't it?

A. Yes.

Q. That is the Loan statement you have got there, isn't it?

A. Yes.

Q. So that mistake comes about by putting some of the Feeder shipments in the Loan statement, don't it?

A. Yes.

Mr. Hart: That is Mr. Robbins' idea of the matter. You are leading the witness.

Mr. Robbins: Examine it, Mr. Hart, and see if you don't agree with me at once.

Mr. Hart: Let me ask, then, this statement was prepared considerably before the time of the commencement of the law suit, was it not?

A. Yes.

Excused.

G. M. Velguth, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. Robbins:

What is your business, Mr. Velguth?

A. I am assistant chief clerk in the car service department of the O.-W. R. & N. Company.

Q. At Portland?

A. Yes, sir.

Q. Now, I will ask you if you checked the size of these cars here at my request and made a memorandum of the size of those different cars?

A. I did.

Q. Tell the court where you checked them and how you checked them; that is, not in detail, but where did you get your information?

A. I got my information from the Railway Equipment Guide that lists the dimensions of cars owned by lines.

Mr. Robbins: Counsel admits these were 36 ft. 6 inch cars. That is what we were going to prove by this witness, so there is no use taking any further time with that.

Mr. Hart: Yes.

Court: Very well.

Excused.

Mr. Robbins: Now, if the court pleases, that is our case, with the exception of those depositions that are floating around the town some place. We think it is necessary to have those depositions in this case, and I have two men out looking for them. They are supposed to be here in town some place, but I have no assurance as to when they will locate them. We feel those depositions are important and material in our case. We are willing for counsel to put on his testimony, such as he wants, with the understanding that we can read those into the record later.

Mr. Hart: We have no more testimony. Mr. Lothrop's testimony, taken out of order, and Mr. Anderson's examination while he was on the stand for the plaintiff constitutes our case.

Mr. Robbins: Are you willing, Mr. Hart, that we can read those depositions in later when they are found?

Mr. Hart: Why, of course, I have no objection to whatever course the court sees fit to pursue in reference to them.

Court: What do those depositions relate to?

Mr. Robbins: They relate to the origin of the shipments and the original documents, as I understand.

Court: The shipment is conceded.

Mr. Robbins: Yes, that is true in a way, your honor, but as I understand it—I have not seen those depositions, but as I am informed, the original shipping documents are set forth in them, showing the consignor and all these different things which of course are practically admitted. If counsel is not going to put in any more testimony, I would like to call Mr. French for a moment if I may.

Court: Very well.

S. J. H. French, recalled for the plaintiff.

Direct Examination.

Questions by Mr. Robbins:

Mr. French, you have heard the testimony here in regard to Item 200 not applying where there is no differential mentioned there?

Court: Isn't this matter that this witness has gone over before?

Mr. Robbins: He didn't make it as clear—I want to hear what his explanation is of their new matter that they have injected into the case.

Mr. Hart: I examined Mr. French exhaustively on that subject, brought out what my theory was with Mr. French, so he could have a chance and you could have a chance.

Mr. Robbins: I know; but since then you have put some witnesses on who have taken an entirely

different turn in the matter. I want to know what his explanation is.

A. Well, Item 200, page 24, of this Joint Live Stock Tariff No. 100-A refers to the application of the differentials and the routing where those differentials are indicated. Now, I don't think it is clearly understood as to what the differentials are. A differential is an arbitrary rate or a lower rate than a local rate, and used as a factor for making a through rate. Now, if it was the intention to apply the Amarillo rate through from Hereford via all lines party to this tariff, they would have published the through rate to Hereford.

Mr. Hart: I think it is not right that the witness should be allowed to argue the case and argue as to his idea of the tariff at such length. We have already taken a good deal of testimony on both sides, and Mr. Lothrop is gone—I am not in shape to make a counter-argument. The court has been advised as to the tariffs. It does not seem to me quite fair to permit Mr. French to now engage in a new argument as to purely his idea of what the carriers might do if they wanted to change the situation.

Court: He is trying to explain why the matter stands as it does now. I will hear the testimony.

A. Consequently, it was necessary to show these differentials as they have shown them in part 1 of the tariff. But that is only a section or a part of

this tariff, which cannot be used in and of itself, except in conjunction with the rates provided in section 2 of the tariff. Now, to refer to these differentials, as also the diagram on page 57, there are through rates from Pecos & Northern Texas points to Canadian Pacific points, to C. B. & Q. points, to C. M. & St. P. points, and to all those points where the numerals are shown in the diagram on that page. Consequently, the rates as authorized by that section would apply in conjunction with those lines or to points on those lines. But there were some lines, such as the Oregon Short Line in this particular routing, or take the lines just above, the Kansas City, Mexican & Orient there are blank spaces there to C. B. & Q. points, and C. St. P. M. & O. points and Great Northern points, and to numerous other points. Now, if you construe this tariff to apply the Amarillo rate from Hereford to Oregon Short Line points, then you make void every numeral on this diagram, page 57, because the blank spaces, then, would indicate nothing.

Court: Tell me what those numerals represent.

A. Those numerals represent the routing by the respective lines party to the tariff. For instance, this Pecos & Northern Railroad shows through rates to Northern Pacific points, and 78 is the route. Now, you turn to route 78 on page 62, and you find here the routing by Amarillo, Texas, Fort Worth &

Denver City. See route 28. Now turn back to route 28, and it says, "Denver, Colorado, C. B. & Q. R. R., Billings, Mont." And there are also other routes. Pecos & Northern Texas Railway to points on the C. M. & P. S. Railway, Route 71, which shows on page 62, via "Amarillo, Texas, So. K. Ry. of Tex.—A. T. & S. F. Ry. See Route 6?" And Route 6 on page 58 says, "Via Kansas City, Mo., C. B. & Q. R. R., Council Bluffs, Ia., C. M. & St. P. Ry." etc. Now, the C. M. & St. P. apparently was agreeable to through rates from Hereford by that line. So was the C. B. & Q. So were the other lines as specified by those numerals on that diagram on page 57. But the Oregon Short Line was not agreeable to that, because there is a blank space shown, and you cannot take section 1 of the tariff without considering section 2 of the tariff, and the application, which is the key to any tariff printed, which by Item 360 plainly states that "Where route number is not shown there are no through rates applicable from the originating line to the destination line via any route except as specifically provided in section No. 3." Now, that is my explanation of the differential.

Cross Examination.

Questions by Mr. Hart:

Have you given a good deal of study to it, Mr. French?

A. I have, to this tariff, Mr. Hart.

Q. It is a little bit involved, is it not?

A. It is.

Q. If you were engaged in constructing a tariff, I think you could probably make it quite considerably clearer?

A. Yes. And this tariff, having been printed five years ago, I should say it would have been printed clearer, or rather made clearer, if it were published today or recently.

Q. Yes. The absence of a route number there in that chart is in direct conflict with the explicit statement in section 1, that where no differentials are stated, the flat rate from the base point is to be applied?

A. If it were not for the clause "As indicated."

Q. Well, now, that is just the point, and I think that is very important. Well, it is this word "as indicated" that to your mind would cause one to refer to section 3?

A. In section 3 are miscellaneous rates—section 2.

Q. Section 3 is the routing, isn't it?

A. No, section 3, Mr. Hart, is the rates to miscellaneous points.

Q. Oh, no, section 3 is the routing and application.

A. No, here is section 3, you see. Section 3 is miscellaneous rates.

Q. All right, perhaps I am wrong.

A. Now, the application is on page 56, and the chart is on page 57.

Q. Well, let us get back to that again, then. What I want to get at is, that there is an apparent conflict between the failure to have a route number there evidencing any through rates, there is an apparent conflict between that and the earlier parts of the tariff, which apparently state the Amarillo rate from Hereford, or at least there would be such conflict, in your judgment, if it were not for the fact that the words—the Amarillo rates are to be applied “as indicated”—the words “as indicated” would mean to your mind that the indication was as shown on pages 56 to 69 of the tariff?

A. Yes, sir.

Q. Well, now, as a matter of fact, even though the Short Line and the Pecos & Northern had not undertaken to agree on through rates, it would be entirely possible for the carriers from Amarillo north to apply the Amarillo rate to Hereford, and make their own settlement with the Pecos & Northern Texas?

A. But that should show in the tariff. You see, you have got a blank space in your routing in your tariff there to O. S. L. points.

Q. Yes, but we are presuming that there is no arrangement between the Pecos & Northern and Oregon Short Line—they haven't any dealings with

one another, so far as through rates are concerned?

A. Yes.

Q. But, so far as shippers are concerned, the Oregon Short Line, and the Union Pacific, and the other lines from Amarillo north could properly say to the shipper, "We will make you a rate of \$116.50—the Amarillo rate. Of course, we will have to make some settlement with the Pecos & Northern covering the transportation service they perform, but, so far as the shipper is concerned, we will give you \$116.50"?

A. But you couldn't have that rate without it was published and lawfully filed with the commission, Mr. Hart.

Q. But if they stated in the tariff that the Hereford rate—that the Amarillo rate applied to Hereford?

A. Yes; if they stated in the tariff.

Q. Yes. Then the shipper would be entitled to it, even though there was no through rate indicated?

A. Oh, if it were stated in the tariff, I will concede that.

Q. Yes.

A. But it is not stated in the tariff.

Q. All right. Let me ask you this: Supposing this explanatory note preceding section 1 read this wise: "Where no differentials are shown the Amarillo rates as shown in section 2 are to be applied,"

the words "as indicated" being left out—supposing they were left out, and there was just the flat statement that where no differentials were shown in this section 1, then the Amarillo rate was to be applied?

A. Well, then, I could not reconcile that note with the application on page 56 of the tariff and the key or chart on page 57.

Q. There would be a conflict?

A. There would be a conflict there.

Q. And there being a conflict or ambiguity, it would be perfectly proper to give the shipper the benefit of the doubt and the lower rate?

A. Well, I cannot quite concede that there is a conflict in the tariff as it applies now.

Q. I know, you say the words "as indicated" take it up?

A. "As indicated" meets the doubt—it qualifies the provision of the first section of the tariff. It is merely a preface to the first section of the tariff. Then you take the second section of the tariff, which shows your rate from Amarillo to these Oregon Short Line points.

Q. Well, then, Mr. French, why do you think it was thought necessary, when they were preparing this language for section 1, and they were talking about stations which had a differential over Amarillo, why do you suppose it was necessary to say that those differentials could be enjoyed, or were

to be used, in making through rates where application and routing is provided on pages 56 to 69?

A. Because the C. M. & St. P. and the C. B. & Q. and the D. & R. G. were agreeable to it, and the rates there are provided by the numerals on page 57

Q. All right. Then if it was necessary to make that reference when you were talking about stations which had a differential which did not take the Amarillo rate—if it was necessary to make that reference concerning those stations, why wasn't it equally necessary to make that reference when you were talking about stations which took the Amarillo rate, which did not have a differential?

A. Because, Mr. Hart, some of the lines—the C. B. & Q., for instance, and the C. M. & St. P. will apply the Amarillo rate from Hereford; they will also apply the \$8.80 differential, to make the through rate to points on the C. M. & St. P. from Abernathy, because there is routing on the chart on page 57 by those lines. But the Oregon Short Line will not join in the application of the Amarillo rate from Hereford, because it expressly provides, on page 57 in the chart, that there is no routing provided there.

Q. Yes, but when it expressly states in this tariff that the rates from the Amarillo group are a certain figure, and that Hereford is in that Amarillo group, and then says that those rates are to be applied as indicated, you think those words "as

indicated" should send a man elsewhere in the tariff to find out whether they are there or not?

A. I certainly do, because, Mr. Hart, if a shipment moved by the C. M. & St. P. to Butte, say, or to some point on that line, the \$125 rate the Amarillo rate to Butte, would apply through from Hereford by the C. M. & St. P., and from Abernathy the \$8.80 rate, or the arbitrary up to Amarillo, would apply from Abernathy through, plus the \$125 rate to Butte. But the Hereford rate is not authorized through, or rather the Amarillo rate is not authorized through from Hereford via the Oregon Short Line, and will not apply to points on that line.

Q. You get back to the one proposition that, because the words "as indicated" follow there, it is necessary then to consult the rest of the tariff?

A. In conjunction with the application on page 56, and the same—practically the same rule in the preface to division 2, or section 2 of the tariff.

Q. Well, that refers you right back to section 1, to this same item, does it not?

A. The two work together, which, in conjunction with the application on page 56, are to be used, and the application on page 56 is very specific. It says that the rates will not apply where there is no routing and no rating provided.

Q. Yes, so that if we had that alone we would have no trouble. If we had that statement alone, we would understand it clearly, if that stood alone?

A. But you have got routings and you have got through rates to points where they are authorized, but not to O. S. L. points.

Q. We get back right to the same proposition, that if there was a flat rate provided there, and the explicit statement that the Amarillo rate was to be applied from Hereford, that would govern, even though there wasn't any route number listed?

A. If it was the intention of all lines to join in the through rate from Hereford, it would have said the Amarillo rate applies through from Hereford; but three-quarters of the lines, or the majority of the lines in that tariff apparently were agreeable to the Amarillo rate through from Hereford; but the other lines where, the blank spaces are shown, were not agreeable, therefore they had to provide, by application in section 1, of the tariff, certain differentials.

Q. You are giving us your idea of the intention of the framer of this tariff, but you will concede—

A. And it is as the tariff reads, Mr. Hart.

Q. Yes, but you will concede, I presume, that any one might readily construe it in the manner I have been contending for here? That is a probable construction?

A. Well, if you were general freight agent of the Oregon Short Line, you would not so construe it. You would hate to have the interstate commerce

inspector drop down on you, and say "What is your authority for that rate?"

Q. Didn't the general freight agent of the Oregon Short Line, Mr. J. A. Reeves, so construe it?

A. Not personally, sir.

Q. The letter was addressed to him personally.

A. There are numerous clerks that will sign the name of the general freight agent when he has not seen the communication.

Q. You are indulging in pure speculation, Mr. French, when you say that?

A. That is true.

Q. The fact is Mr. Reeves, general freight agent, was addressed personally on this, and that subsequently to that letter and to a reference to this tariff made thus to him, a refund was made which recognized that Hereford-Amarillo proposition?

A. But it was a mistake, Mr. Hart, under that tariff.

Q. That is your idea?

A. Yes, and I think the tariff shows for itself that that was a mistake.

Q. In other words, you think it would not be safe for any shipper to undertake to find out what the rate is, unless he read the tariff from cover to cover? Is that the fact?

A. You know about the tariffs—

Q. Is that the fact, Mr. French?

A. The first thing a shipper must do is to turn to the application of the tariff.

Q. I ask you if it is a fact that in getting at the rate the shipper is not warranted in resting when he finds his combination and his rate, but he must read the entire tariff to see whether there is some other application or some other limitation?

A. The law charges the shipper with knowledge of the rate.

Q. Yes, you have produced here, as your evidence of this local rate from Hereford to Amarillo and Abernathy to Amarillo, you have produced certain sheets which were taken from the tariffs. Have you given us the tariffs so that we may know whether or not there are any limitations, or exceptions, or provisions in the rest of those tariffs which limit, or change, or alter in any way that local rate?

A. Well, we have extracts of the tariff that was in operation at the time from the Interstate Commerce Commission, and certified to.

Q. Yes, well now, supposing we got an extract of section 1 and section 2 from this exhibit 1, we could show the rate clearly without the limitation that you are contending for.

A. Well, now, you know that between points locally in Texas there is a state commissioner, and that those mileage rates between those two points are the rates. I think you will concede that \$39.60

from Abernathy and \$26.40 from Hereford are the local rates to Amarillo.

Q. I don't know anything about the Texas rates.

A. Well, you cannot controvert them.

Q. I am only trying to make it clear that there is, to say the least, a very great conflict and ambiguity in this tariff.

A. Well, I think I have explained the differentiating feature in that tariff in connection with those differentials, and that is, that where the rates are authorized through to points on the lines party to that tariff, the diagram on page 57 plainly shows it, and the rates and all the junction points, and where the rates are not shown there is a blank space, and there are almost as many blank spaces in the tariff as there are numerals.

Q. That is not quite accurate; but at least it is quite clear, in the use of its differentials, you are given specific reference to the chart and to the routing?

A. Yes.

Q. And when you are looking for the rates from stations which take no differentials, you are given no such reference?

A. If I were to construe the tariff the way you do, I would void the chart on page 57 of the tariff, which you cannot do lawfully.

Q. I don't see that. That is not quite clear to

me, but perhaps it is clear to the court. You certainly would use the chart so far as differentials are concerned, wouldn't you?

A. Not to points on the Oregon Short Line.

Q. You have your explicit statement that where differentials are shown they are to be used in connection with these route numbers, and you haven't any such statement as to stations which take no such differential?

A. But the blank shows that there is no routing from the points taking the differentials.

Q. I am talking about the reference which is made in the beginning of this tariff, this section 1, this grouping.

A. I thought you were referring to page 57.

Q. I am talking about the reference in section 1, where the grouping and the common point rates are stated, and that reference, so far as differentials are concerned, tells you to go to 56-69, tells you when you are figuring on those differentials you must take into consideration 56 to 69, take into consideration the route numbers and the absence of route numbers?

A. True.

Q. On the other hand, when you are considering the rates from points which take the same rate as Amarillo, where there is no differential, you are given no such reference? Now, that is true, is it not?

A. You are given no such reference because the rates do not apply to those points where there is no such reference.

Q. Although they say on their face that they do?

A. Well, I cannot concede the tariff is applicable the way you see it; and I think I have made plain the fact that those differentials, as shown in section 1, are made to apply only to the lines that agree to it and as shown in the routings, and the rates do not apply where there is no authority on page 57.

Mr. Hart: That is all.

Examination by the Court.

Q. You spoke about the inspector dropping down upon you. Have you had any inspector?

Mr. Hart: Your honor understands Mr. French is a local man, is with the O.-W. R. & N. here, and is not a Short Line man at all.

A. For your information, I once had an interstate—

Mr. Hart: Never mind, Mr. French, if you are not going to discuss this case.

A. I was just going to say to the court that an interstate commerce inspector—

Court: What I wanted to get at was whether or not you had ever had a special inspector construe this situation.

A. Oh, this particular tariff, no, sir; no.

Q. Now, Mr. French, why do you not apply the differentials to Abernathy, instead of the \$39.60 rate?

A. Because, sir, Abernathy is a point on the Pecos & Northern Texas Railroad, and there is no routing provided on page 57 from points on the Pecos & Northern Texas Railroad to points on the Oregon Short Line; consequently the only basis would be the local rate of \$39.60 from Abernathy to Amarillo plus the \$116.50 rate to Pocatello, \$118.50 to Monida, or \$125 rate to Dillon.

Court: I see your position now.

Excused.

Court: Is that all the evidence you have except those depositions?

Mr. Robbins: Yes, except the depositions.

Court: I can adjourn this case until some day next week, and you can get those depositions here in the meantime. I doubt very much whether you have much to show in your depositions.

Mr. Robbins: Well, I don't know, myself, your honor, until I see them.

Adjourned until Friday, April 27, at which time a further adjournment was taken to May 14, 1917.

Portland, Oregon, May 14, 1917. 2 P. M.

Mr. Robbins: If the court pleases, in these two

cases of the *O. S. L. v. Portland Cattle Loan and Cattle Feeder Companies*, as your honor knows, we stipulated to take depositions at Amarillo. Now, our information is that those depositions were taken, but we have been unable to locate them, and I have entered into a verbal stipulation with Mr. Hart that we may read the copies of these depositions; that is, not the copy, but they were rewritten, the original depositions which were taken at Amarillo. But I find that a number of the original exhibits were attached to those depositions, so I will be unable to produce them at this time. However, we desire to offer in evidence these depositions as they are here today.

The first deposition I desire to offer is in the Feeder case.

Counsel has suggested that it is a waste of time for us to read these. Your honor will probably want to refer to them and read them anyway; and I think it would be much better, probably, if we would not take up the time to read them.

Court: Well, introduce them.

Mr. Robbins: We will offer in evidence, then, depositions in the Portland Feeder case, starting out with E. M. Jones, and the rest of these that are fastened together. And also in the Portland Cattle Loan case.

Now, I notice an exhibit attached to each one

of these, which I take it is the record of the feed yard man down there. We would like to offer those in evidence. I understand they are merely marked for identification.

Mr. Hart: Mr. Robbins correctly states our understanding that these may be treated as if they were the transcripts of the testimony originally taken. But, of course, with that concession, I want to reserve the right to make all the objections which are noted in the depositions themselves.

Court: How about those exhibits?

Mr. Robbins: Well, of course, if those exhibits come, your honor, we would like to offer them in evidence. But I firmly believe that the man who took those depositions did not extend them—what has become of them I don't know—because myself, as well as Mr. Hart's people, have tried to locate them. But I am not through yet—I am going to hunt this thing up, and run it down, because I am not satisfied with the treatment I got at Amarillo. If necessary, I am going to send a man down there to see what became of these depositions. If I discover them at a reasonable time, I would like the privilege of offering them in this case—that is, the exhibits out of those.

Court: Do you object to that if they get here in time?

Mr. Hart: Of course, I am on the slow side of

the case, your honor. I don't care how much time he takes. I do want to take advantage of any failure of proof which Mr. Robbins may encounter, because, as I said before, these are cases in which the claims made are inequitable as between the contracting parties. The necessity for bringing the suits arose out of the obligation to enforce the Interstate Commerce law as the Short Line Company conceives that obligation. At the same time, from the fact that so much actual injustice results from any such late enforcement of their alleged construction of the tariffs, I would be remiss in my duty to my client if I did not take advantage of every means possible to defeat the claims.

Court: You want to submit the case at this time?

Mr. Hart: Yes.

Court: Well, you may submit the case, and if the exhibits come, you can apply to the court for leave to introduce those exhibits, and of course the other party will have notice of that, and you can test that out at that time.

Mr. Robbins: I intend to try to get them. In fact, I am trying to do it now. That is all we have.

Mr. Hart: That is all we have.

And afterwards, to-wit: on the.....day of
....., 1917, there was duly filed in said

court a stipulation in words and figures as follows,
to-wit:

STIPULATION.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a cor-
poration,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

No. 7233

PLAINTIFF'S EXHIBIT No. 1.

Only two Supplements to this Tariff will be in
effect at any time.

I. C. C. No. 265.

Cancels I. C. C. No. 214.

JOINT LIVE STOCK TARIFF NO. 100-A.

Cancels Joint Live Stock Tariff No. 100

Naming Local, Joint and Proportional Rates
on

RANGE CATTLE, ALSO HORSES

When Part of a Shipment of Range Cattle and Ac-
companying Same

From Stations in

Arizona, Colorado, Kansas, New Mexico, Okla-
homa and Texas,

Also Stations in the Republic of Mexico

To Stations in

Colorado, Iowa, Idaho, Montana, Nebraska, North
Dakota, South Dakota, Washington and Wyoming.

Also Stations in the Dominion of Canada.

Issued March 26, 1912. Effective May 2, 1912.

Issued by W. A. Poteet, Agent,

Kansas City, Mo.

J. D. H. Co.—3,500

Page 4 of the Exhibit

Index to Points of Origin

See Item No. 5.

Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*
Abernathy	Tex.		P. & N. T. Ry.			120		
*	*	*	*	*	*	*	*	*
Amarillo	Tex.		S. K. Ry. of T.			186		
*	*	*	*	*	*	*	*	*

Page 5 of the Exhibit

Index to Points of Origin—Con.

*	*	*	*	*	*	*	*	*
Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*
Hereford	Tex.		P. & N. T. Ry.			98, *255		
*	*	*	*	*	*	*	*	*

*Refers to Item Numbers of Miscellaneous Rates.

Page 9 of the Exhibit
Index to Points of Destination
See Item No. 5.

Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*

Page 11 of the Exhibit
Index to Points of Destination—Con.

Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*
Dillon	Mont.		O. S. L.			2060		
*	*	*	*	*	*	*	*	*

Page 12 of the Exhibit
Index to Points of Destination—Con.

Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*
Idaho Falls	Ida		O. S. L.			2050		
*	*	*	*	*	*	*	*	*

Page 14 of the Exhibit
Index to Points of Destination—Con.

Stations			Roads			Index No.		
*	*	*	*	*	*	*	*	*
Monida	Mont.		O. S. L.			2055		
*	*	*	*	*	*	*	*	*

Page 18 of the Exhibit.
Intermediate Application

Item
No.

Application of Rates from and to Intermediate Points.

Will not apply in connection with rates shown in
 5 Section 3, pages 52 to 55 inc.

To a point of destination not named in Section 2 of this Tariff but which is directly between two points to which specific rates are named, in such section, the rate to apply will be the rate to the more distant of the two points between which the intermediate point is located; routing to be the same as applies to the more distant point.

From a point of origin not named in Section No. 1 of this Tariff but which is directly between two points from which specific rates are named in such section, the rate to apply will be the rate from the more distant of the two points between which the intermediate point is located; routing to be the same as applies from the more distant point.

* * * * *

Page 24 of the Exhibit

Section No. 1.

Item 200—Governing use of differentials shown in
 Section No. 1, pages 24-31 inclusive.

The differentials shown in Section No. 1 are to be added to or deducted from the Amarillo, El Paso

or Deming rates as shown in Section No. 2 hereof, pages 32 to 51 inclusive, to arrive at the through rate, where application and routing is provided on pages 56 to 69.

Where no differentials are shown, the Amarillo or El Paso-Deming rates as shown in Section No. 2 are to be applied as indicated.

Page 26 of the Exhibit

Section No. 1.

Basis from Points of Origin for Rates on Range
Cattle, Also Horses (See Items 10 and 200)

In Dollars and Cents per 36½ Foot Car

THE PECOS RIVER RAILROAD CO.

Index No.	From Stations.	Amarillo, Add. Deduct.	Index No.	From Stations.	Amarillo, Add. Deduct.
79	Angeles,	Tex. \$25.00	83	Arno,	Tex. \$28.50
80	Orla,	" 25.00	84	Patrole,	" 28.50
81	Riverton,	" 25.00	85	Pecos,	" 28.50
82	Dixieland,	" 28.50			

THE PECOS & NORTHERN TEXAS RY. CO.

Index No.	From Stations.	Rate Basis.	Index No.	From Stations.	Amarillo, Add. Deduct.
90	Zita,	Tex. Amarillo.	125	Burris,	Tex. \$15.40
91	Haney,	" "	126	Posey,	" 15.40
92	Canyon,	" "	127	Slayton,	" 16.50
93	Canyon Jet.,	" "	128	Slayton Jet.	" 17.60
94	Lester,	" "	(R) 129	Southland,	" 17.60
95	Umbarger,	" "	(R) 130	Buenos,	" 17.60
96	Dawn,	" "	(R) 131	Dugger,	" 18.70
97	Joel,	" "	(R) 132	Post St Yds.,	" 18.70
98	Hereford,	" "	(R) 133	Post,	" 18.70
99	Summerfield,	" "	(R) 134	Augustus,	" 19.80
100	Black,	" "	(R) 135	Justiceburg,	" 20.90
101	Frona,	" "	(R) 136	Justiceburg	
102	Parmerton,	" "		Stk Yds.,	" 20.90
103	Bovina,	" "	(R) 137	Sand Creek	
104	Wilsey,	" "		Spur,	" 22.00
Index No.	From Stations.	Amarillo, Add. Deduct.	(R) 138	Eppler,	" 22.00
105	Farwell,	N. M. \$ 2.75	(R) 139	Fullerville,	" 23.10
Index No.	From Stations.	Rate Basis.	(R) 140	Bermott,	" 23.10
106	Hutson,	Tex. Amarillo.	(R) 141	Brand,	" 24.20
107	Ralph,	" "	(R) 142	Snyder,	" 24.20
108	Happy,	" "	(R) 143	Chorn,	" 25.00
109	Kaffir,	" "	(R) 144	Hermleigh,	" 25.00
110	Tulia,	" "	(R) 145	Pyron,	" 25.00
111	Eunice,	" "	(R) 146	Bernecker,	" 25.00
112	Kress,	" "	(R) 147	Gannon,	" 25.00
113	Finney,	" "	(R) 148	Sweetwater	
114	Plainview,	" "		Jet.,	" 25.00
Index No.	From Stations.	Amarillo, Add. Deduct.	(R) 149	Sweetwater,	" 25.00
115	Plainview Jet.,	Tex. \$ 4.40	(R) 150	Lider,	" 4.40
116	Ferguson,	" 4.40	(R) 151	Aiken,	" 6.60
117	Hale Center,	" 4.40	152	Lockney,	" 8.00
118	Swastika,	" 4.40	153	Muney,	" 10.20
119	Aley,	" 8.80	154	Floydada,	" 11.00
120	Abernathy,	" 8.80	155	Lofton,	" 18.70
121	Monroe,	" 14.30	156	Wilson,	" 18.70
122	Lubbock St. Yds.,	" 14.30	157	Dune,	" 19.80
123	Lubbock Jet.,	" 14.30	158	Tahoka,	" 19.80
124	Lubbock,	" 14.30	159	Skeen,	" 21.00
			160	O'Donnell,	" 22.10
			161	Hindman,	" 23.20
			162	Arvana,	" 23.20
			163	Lamesa,	" 23.20

(R) Indicates reduced rates.

Page 32 of the Exhibit

Section No. 2.

Rates from Amarillo, El Paso-Deming Groups.
Item 205.

The rates shown in Section No. 2, in columns headed "Amarillo" and "El Paso-Deming," are to be applied from stations shown in Section No. 1, as taking Amarillo or El Paso-Deming Rate Basis or same are to be used as a basis for arriving at through rates from stations shown in Section No. 1 as taking differentials OVER or UNDER Amarillo or El Paso-Deming rates, where application and routing is provided on pages 56 to 69 inc. from such point of origin to the destination station.

See also item 200, page 24.

Page 50 of the Exhibit

Section No. 2.

Rates on Range Cattle, Also Horses (See Item 10
also 205, page 32.) In Dollars and Cents
Per 36½ Foot Car.

NORTHERN PACIFIC RAILWAY—Continued.

Index No.	To Stations.	From Amarillo Group.		From El Paso-Deming Group.	
		In Lots of Less Than 10 Cars.	In Lots of 10 Cars or More.	In Lots of Less Than 10 Cars.	In Lots of 10 Cars or More.
2013	Whitehall, Mont.	\$130.00	\$125.00	\$158.50	\$153.50
2014	Twin Bridges, "	130.00	125.00	158.50	153.50
2015	Sheridan, "	130.00	125.00	158.50	153.50
2016	Alder, "	130.00	125.00	158.50	153.50
2017	Toston, "	130.00	125.00	158.50	153.50
2018	Townsend, "	130.00	125.00	158.50	153.50
2019	Helena, "	130.00	125.00	158.50	153.50
2019-A	Willow Creek, "	130.00	125.00	158.50	153.50
2019-B	*Sappington, "	130.00	125.00	158.50	153.50
2019-C	Cardwell, "	130.00	125.00	158.50	153.50
2019-D	Deer Lodge, "	135.00	130.00	163.50	158.50
2019-E	*Kohrs, "	135.00	130.00	163.50	158.50
2019-F	Garrison, "	135.00	130.00	163.50	158.50
2020	Drummond, "	135.00	130.00	163.50	158.50
2021	Missoula, "	142.00	137.00	170.50	165.50

OREGON SHORT LINE R. R.

Index No.	To Stations.	From Amarillo Group.		From El Paso-Deming Group.	
		In Lots of Less Than 10 Cars.	In Lots of 10 Cars or More.	In Lots of Less Than 10 Cars.	In Lots of 10 Cars or More.
2050	Idaho Falls, Ida.	\$121.50	\$116.50	\$150.00	\$145.00
2051	Market Lake, "	121.50	116.50	150.00	145.00
2052	*Camas, "	121.50	116.50	150.00	145.00
2053	Dubois, "	121.50	116.50	150.00	145.00
2054	Spencer, "	123.50	118.50	152.00	147.00
2055	Monida, Mont.	123.50	118.50	152.00	147.00
2056	Lima, "	126.00	121.00	154.50	149.50
2057	Red Rock, "	126.00	121.00	154.50	149.50
2058	*Barratts, "	130.00	125.00	158.50	153.50
2059	*Dalys, "	130.00	125.00	158.50	153.50
2060	Dillon, "	130.00	125.00	158.50	153.50

UNION PACIFIC R. R.

Index No.	To Stations.	From Groups Amarillo. El Paso- Deming.		Index No.	To Stations.	From Groups Amarillo. El Paso- Deming.	
2065	Cheyenne, Wyo.	\$ 75.00	\$103.50	2079	*Slade, Neb.	.....	\$118.50
2066	Egbert, "	75.00	103.50	2080	*Dexter, "	.....	118.50
2067	Pine Bluffs, "	75.00	103.50	2081	Sutherland, "	.....	118.50
2068	Rawlins, "	† 93.50	118.50	2082	*O'Fallons, "	.....	118.50
2069	Rock Springs, "	113.50	142.00	2083	Hershey, "	.....	118.50
2070	*Barton, Neb.	.....	118.50	2084	*Nichols, "	.....	118.50
2071	Big Springs, "	.....	118.50	2085	Birdwood, "	.....	118.50
2072	*Megeath, "	.....	118.50	2086	*Pallas, "	.....	118.50
2073	Brule, "	.....	118.50	2087	North Platte, "	.....	118.50
2074	*Plano, "	.....	118.50	2088	*Gannett, "	.....	118.50
2075	Ogallala, "	.....	118.50	2089	*Keith, "	.....	118.50
2076	*Rosecoe, "	.....	118.50	2090	Maxwell, "	.....	118.50
2077	*Korty, "	.....	118.50	2091	*Hindry, "	.....	118.50
2078	Paxton, "	.....	118.50	2092	Brady Island, "	.....	118.50

*No agent. Freight must be prepaid. †Indicates advanced rates.

Page 50 of the Exhibit (Continued)

†From Haney, Tex., Index No. 91 and Canyon, Tex., Index No. 92 and from stations Texline, Tex., Index No. 375 to Estelline, Index No. 408, inclusive, rate will be \$88.50 per 36½ foot car.

Page 56 of the Exhibit

Application of Rates

Where routing is shown in this Tariff, it is that ordinarily and customarily to be used, and should be strictly observed by Agents. If, from any cause shipments are routed by carriers via junction points other than those designated, but over the lines of carriers parties to this Tariff, the rate published herein will apply.

NOTE.—Where application of any rate is limited to route via certain carriers, this provision is not intended to authorize application of such rate via or in connection with a competing route or carrier, nor does it cover cases where shippers route shipments contrary to provisions of Tariff.

Rates provided herein from points of origin shown in Section No. 1 to points of destination shown in Section No. 2, will apply only via the routes indicated in chart on page 57, except as provided in Item 350.

NOTE 1.—Where Route Number is not shown there are no through rates applicable from the originating line to the destination line via any route except as specifically provided in Section No. 3.

(See also Item 350.)

NOTE 2.—The insertion of a route number is not to be construed as indicating that rates named will apply from all points on the originating line to all points on the destination line via any or all intermediate lines. The data shown on pages 58 to 69 inclusive opposite the route number indicated specifically describes the points of origin, the routes and the points of destination.

PAGE 57 OF THE EXHIBIT

Routing and Application. Chart of Routes 1 to 300 Inc., pages 58 to 69 Inc.

To	From
A. T. & S. F. Ry.,	4 69
Const Lines of A.	
T. & S. F. Ry.,	300
Ariz. & N. M. Ry.,	250
C. R. I. & P. Ry.,	40 99
C. R. I. & G. Ry.,	99
C. & S. Ry.,	19 23
Crosbyton S.P.R.R.,	290
E. P. & S. W. Sys.,	117
F. W. & D. C. Ry.,	139
G. H. & S. A. Ry.,	175
K. C. & S. O. Ry.	176
K. C. M. & O. Ry.	
K. C. M. & O. Ry.,	235
Pecos & N. Tex. Ry.,	69
Pecos River R. R.,	69
Q. A. & P. R. R.,	260
R. G. & E. P. Ry.,	280
Mex. N. W. Ry.,	180
S. K. Ry. of Tex.,	53
So. Pac. Co.,	200
S. L. R. M. & P. Ry.,	201
T. & P. Ry.,	160
Wich. Valley Ry.,	139
Wichita F.&S.O. Ry.,	270
W. S. S. & Y. P. Ry.,	8 72
W. & N. W. Ry.,	15 81
Union Pacific R. R.,	13 83
P. R. C. & N. W. Ry.,	3 83
O. S. L. R. R.,	14 ..
Nor. Pac. Ry.,	12 78
R. C. B. H. & W. Ry.,	16 77
M. S. & P. & S. S. M. Ry.,	10 80
M. & St. L. Ry.,	11 76
Gt. Nor. Ry.,	9 75
Cal. Valley Ry.,	7 72
D. N., W. & P. Ry.,	17 79
C. & S. Ry.,	.. 74
C., St. P., M. & O. Ry.,	.. 73
C. & N. W. Ry.,	2 68
C., M. & P. S. Ry.,	6 71
C., M. & St. P. Ry.,	5 70
C. B. & Q. R. R.,	1 67

STIPULATION.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

No. 7233.

The parties stipulate that the foregoing sheets numbered 2 to 16 inclusive and described as pages 1, 4, 5, 9, 11, 12, 14, 18, 24, 26, 32, 50, 56 and 57 of Plaintiff's Exhibit 1 in this action are true and correct excerpts from Plaintiff's Exhibit 1. The parties further stipulate that said excerpts contain all of the said Exhibit 1 applicable to the transportation of the shipments described in the complaint in this action and necessary for the determination of the duly filed and published tariff rate properly to be charged for said shipments.

Dated November 23 1917.

W. A. Robbins,

Attorney for Plaintiff.

Carey & Kerr,

Charles A. Hart,

Attorneys for Defendant.

STIPULATION.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

No. 7233.

The parties hereto stipulate that the annexed copy of portions of Plaintiff's Exhibit 1 in this action shall constitute and be a part of the bill of exceptions duly settled and allowed herein and that said copy of portions of said exhibit shall be considered and used as Plaintiff's Exhibit 1 and as a part of the record in this cause, and that it shall not be necessary to include in the printed record herein the whole of said Plaintiff's Exhibit 1. The parties further stipulate that said Exhibit 1 may be forwarded with the record herein to the Circuit Court of Appeals for the Ninth Circuit upon defendant's writ of error, but that the annexed copy of portions of said exhibit may be used instead of the exhibit in making up the record herein.

Dated November 23, 1917.

W. A. Robbins,

Attorney for Plaintiff.

Carey & Kerr,

Charles A. Hart,

Attorneys for Defendant.

And afterwards, to-wit, on the 8th day of November, 1917, there was duly filed in said court a petition for writ of error in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

Portland Cattle Loan Company, a corporation, the defendant above named, conceiving itself aggrieved by the order made and the judgment entered thereon in this proceeding on the 29th day of September, 1917, and by the rulings made in this action as will appear from the assignment of errors filed herewith, and whereby it was adjudged that plaintiff have and recover from defendant the sum of one thousand seventy-seven and seventy hundredths dollars (\$1,077.70) together with its costs and disbursements incurred in said action, comes now and petitions said court for an order allowing it, said defendant, to prosecute a writ of error to the United States Circuit Court of Appeals in and for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided for the cor-

rection of the error so complained of, and also for an order fixing the amount of the supersedeas bond which the defendant shall give and furnish upon said writ of error, and that upon the giving of such bond all further proceedings in this court be suspended, stayed, and superseded until the determination of such writ of error by the United States Circuit Court of Appeals in and for said Ninth Circuit. And your petitioner will ever pray, et cetera.

Carey & Kerr,

Charles A. Hart,

Attorneys for Defendant.

And afterwards, to-wit, on the 8th day of November, 1917, there was duly filed in said court assignments of error, in words and figures as follows, to-wit:

ASSIGNMENTS OF ERROR.

In the Circuit Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

Comes now the above named defendant, Port-

land Cattle Loan Company, and makes and files the following assignments of error upon which it will rely upon its prosecution of a writ of error in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this honorable court made and entered on the 29th day of September, 1917.

The learned court erred as follows :

I.

In overruling the defendant's motion for an order adopting and making findings of fact and conclusions of law determining that defendant is entitled to a dismissal of this action and for judgment for costs and its disbursements upon the ground that the tariffs of plaintiff and its connecting carriers attempted to be applied to the transportation of defendant's property were ambiguous and justified the freight charges actually collected prior to the commencement of the action.

II.

In making and entering general findings for plaintiff herein, and in ordering and directing the entry of judgment in favor of plaintiff and against defendant, and in determining that the tariffs of plaintiff and its connecting carriers properly interpreted required the collection of the freight charges demanded by plaintiff and required the

entry of judgment against defendant for such freight charges.

Carey & Kerr,
Charles A. Hart,
Attorneys for Defendant.

And afterwards, to-wit, on the 8th day of November, 1917, the same being the fourth judicial day of the regular November term of said court, present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR AND
FIXING BOND ON WRIT OF ERROR.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

Upon motion of Charles A. Hart, one of the attorneys for defendant, Portland Cattle Loan Company, in the above entitled cause, and upon the filing of petition for writ of error and assignments of error heretofore filed herein;

It is hereby ordered that the writ of error as

prayed for in said petition be allowed, and that the amount of the supersedeas bond to be given by defendant, Portland Cattle Loan Company, upon said writ of error be and the same is hereby fixed at the sum of fifteen hundred dollars (\$1,500), and that upon the giving of said bond all further proceedings in this court be suspended, stayed, and superseded pending the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 8th day of November, 1917.

CHARLES E. WOLVERTON,
Judge.

And afterwards, to-wit, on the 9th day of November, 1917, there was duly filed in said court a bond in words and figures as follows, to-wit:

BOND ON WRIT OF ERROR.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a corporation,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,
Defendant.

Know All Men by These Presents, That We,
Portland Cattle Loan Company, a corporation, as

principal, and National Surety Company, a corporation duly organized under the laws of the state of New York, and duly qualified to do business within the state of Oregon, as surety, are held and firmly bound unto the plaintiff in the above entitled action in the sum of fifteen hundred dollars (\$1,500) for the payment of which well and truly to be made the undersigned bind themselves and each of them jointly and severally, and their successors, representatives, and assigns respectively, firmly by these presents.

Sealed with our seals and dated this 8th day of November, 1917.

Whereas, the above named defendant, Portland Cattle Loan Company, has sued out a writ of error in the United States Circuit Court of Appeals in and for the Ninth Circuit to reverse the judgment entered in the above entitled action in favor of plaintiff therein and against defendant for the sum of one thousand seventy-seven and seventy hundredths dollars (\$1,077.70) together with interest and costs.

Now, therefore, the condition of this obligation is such that if the above named Portland Cattle Loan Company, a corporation, shall prosecute such writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obli-

gation shall be void; otherwise to remain in full force and effect.

PORTLAND CATTLE LOAN COMPANY,

By Carey & Kerr,

Charles A. Hart,

Its Attorneys.

NATIONAL SURETY COMPANY,

By J. C. Ainsworth,

(Corporate Seal) Resident Vice-President.

Attest: Clarence D. Porter,

Resident Assistant Secretary.

Countersigned at Portland, Oregon, November 8,
1917,

NATIONAL SURETY COMPANY,

By Jas. McL. Wood & Co.,

Resident Agents.

Approvd this 9th day of November, 1917.

CHARLES E. WOLVERTON,

Judge.

STIPULATION.

In the District Court of the United States for the
District of Oregon.

Oregon Short Line Railroad Company, a cor-
poration,

Plaintiff,

vs.

Portland Cattle Loan Company, a corporation,

Defendant.

The parties hereto stipulate that the foregoing record, pages 1 to 236, inclusive, is a true and correct copy of the record of this action in the District Court of the United States for the District of Oregon, and the clerk of said District Court of the United States for the District of Oregon may certify the same upon this stipulation as a true and correct copy of said record without comparison thereof with the original record in his office.

Dated December ^{24th} 1917.

.....*A. C. Spencer*.....

.....*W. A. Robbins*.....

Attorneys for Plaintiff.

.....*Corey D. Kern*.....

.....*Charles A. Hart*.....

Attorneys for Defendant.

CERTIFICATE OF CLERK OF UNITED STATES
DISTRICT COURT TO TRANSCRIPT
OF RECORD.

United States of America, District of Oregon—ss:

I, G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing writ of error and in obedience thereto, do hereby certify in accordance with the foregoing stipulation of the parties and without comparison with the record, that the foregoing pages numbered 4 to 236, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of *Oregon Short Line Railroad Company*, plaintiff and defendant in error, against *Portland Cattle Loan Company*, defendant and plaintiff in error, as the same remain of record and on file in my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland in said District this 21st day of December, 1917.

.....*G. H. Marsh*.....,

Clerk United States District Court,
District of Oregon.